FORM NLRB-502 (RC)
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 19-RC-310218	Date Filed 1/12/2023

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 representative 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: Potbelly Sandwich Shop	2b. Address(es) of Establishment(s) involved *(Street and number, City, State, ZIP code)*: 802 SW 6th Ave Portland OR 97204
3a. Employer Representative - Name and Title: Miriam Arteaga Ochoa, General Manager Mike Narramore, HR Representative	3b. Address *(if same as 2b - state same)*: Same

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
971-202-5015	541-212-9802		mike.narramore@potbelly.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc.)*	4b. Principal Product or Service	5a. City and State where unit is located:
Restaurant	Food service	Portland, OR

5b. Description of Unit Involved: **Included:** Full time and part time employees including shift leads. **Excluded:** Supervisors, managers, and guards.	6a. Number of Employees in Unit: 13 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? ☒ Yes ☐ No

Check One: ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) 1/11/2023 and Employer declined recognition on or about (Date) _____ (If no reply received, so state).
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

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

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

11. Election Details: If the NLRB conducts and 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):
02/13/2023	3pm-5pm	Back Room

12a. Full Name of Petitioner *(including local name and number)*: Restauraunt Workers of Portland	12b. Address *(street and number, city, State and ZIP code)*: 2249 E Burnside St. Portland, OR 97214

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

12d. Tel. No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
	971-239-3606		503RWP@gmail.com

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

13a. Name and Title: Mark Medina, Organizer	13b. Address *(street and number, city, State and ZIP code)*: 2249 E Burnside St. Portland, OR 97214

13c. Tel. No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address
	971-239-3606		503RWP@gmail.com

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
Mark Medina		Organizer	01/11/23

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 may cause the NLRB to decline to invoke its processes.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 36
Green-Wyatt Federal Building
1220 SW 3rd Avenue, Suite 605
Portland, OR 97204-2170

Agency Website: www.nlrb.gov
Telephone: (503)326-3085
Fax: (503)326-5387

Download NLRB Mobile App

January 12, 2023

URGENT

mike.narramore@potbelly.com
Miriam Arteaga Ochoa, General Manager
Mike Narramore, HR Representative
Potbelly Sandwich Shop
802 SW 6th Ave.
Portland, OR 97204

Re: Potbelly Sandwich Shop
Case 19-RC-310218

Dear Ms Arteaga Ochoa and Mr. Narramore:

Enclosed is a copy of a petition that Restaurant Workers of Portland filed with the National Labor Relations Board (NLRB) seeking to represent 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 Michael Mols whose telephone number is (503)326-3171. 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 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 **Friday, January 20, 2023** 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 Pacific Time** on **January 25, 2023**. 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 January 25, 2023.** 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 Pacific Time** on **January 30, 2023.**

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **9:00 AM** on **Thursday, February 2, 2023 by way of video hearing or teleconference (Zoom),** 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.

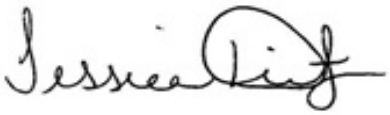
Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You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

Controlled Unclassified Information (CUI): This National Labor Relations Board (NLRB) proceeding may contain Controlled Unclassified Information (CUI). Subsequent information in this proceeding may also constitute CUI. National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

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,

RONALD K. HOOKS
Regional Director

By: 

JESSICA DIETZ
Officer in Charge

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)
7. Description of Voter List Requirement after Hearing in Certification and Decertification Cases (Form 5580)

Form NLRB-5492
(Rev: 12-2015)

National Labor Relations Board

NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Teamsters Local Union No. 305 has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 19-RC-310218 seeking an election to become certified as the representative of the employees of Potbelly Sandwich Shop in the unit set forth below:

Included: Full-time and part time employees including shift lead.

Excluded: Supervisors, managers and guards.

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 (503)326-3085.

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 19

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

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 9:00 AM on **Thursday, February 2, 2023** and on consecutive days thereafter until concluded, by way of video hearing or teleconference (Zoom), 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, Potbelly Sandwich Shop 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** Pacific time on January 25, 2023**.** Following timely filing and service of a Statement of Position by Potbelly Sandwich Shop, 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** Pacific on January 30, 2023.

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** Pacific 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 12, 2023

RONALD K. HOOKS
Regional Director

By: _____
Jessica Dietz, Officer in Charge
NLRB, Subregion 36
Green-Wyatt Federal Building
1220 SW 3rd Avenue, Suite 605
Portland, OR 97204

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

AFFIDAVIT OF SERVICE OF: Petition dated January 12, 2023**, Notice of Representation Hearing dated** January 12, 2023**, 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 12, 2023, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

mike.narramore@potbelly.com
Miriam Arteaga Ochoa, General Manager
Mike Narramore, HR Representative
Potbelly Sandwich Shop
802 SW 6th Ave.
Portland, OR 97204

503RWP@gmail.com
Mark Medina, Organizer
Restaurant Workers of Portland
2249 E. Burnside St.
Portland, OR 97214

January 12, 2023	Kristy Kennedy Designated Agent of NLRB
Date	Name
	Kristy Kennedy 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
19-RC-310218	January 12, 2023

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 hat 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 contes ing their eligibility.

5. Is there a bar to conducting an election 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 he petition who remain employed as of the date of the filing of the pe ition. (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 19-RC-310218

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
19-RC-310218	January 12, 2023

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 o her 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.

FORM NLRB-5580
(6-20)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF VOTER LIST REQUIREMENT AFTER HEARING IN CERTIFICATION AND DECERTIFICATION CASES

If an election is directed, the employer must provide the voter list. To be timely filed and served, the voter list must be *received* by the Regional Director and the parties named in the Decision and Direction of Election within 2 business days after the issuance of the Decision unless a longer period, based on extraordinary circumstances, is specified in the Decision and Direction of Election. A certificate of service on all parties must be filed with the Regional Director when the voter list is filed. The region will not serve the voter list.

List Contents - The list must include 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 all eligible voters). The Employer must also include in separate sections of that list the same information for those individuals the parties have agreed will be permitted to vote subject to challenge or those individuals who, according to the Decision and Direction of Election, will be permitted to vote subject to challenge.

List Format - The list must be in an electronic format approved by the General Counsel, unless the Employer certifies that it does not have the capacity to produce the list in the required format. Accordingly, 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. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at: **www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.

It may be appropriate for the Employer to produce multiple versions of the list where the data required is kept in separate databases or files so long as all of the lists link the information to the same employees, using the same names, in the same order and are provided within the allotted time. If the Employer provides multiple lists, the list used at the election will be the list containing the employees' names and addresses.

Filing of the List - The voter list must be filed electronically by submitting (E-Filing) it through the Agency's website (**www.nlrb.gov**), unless the Employer provides a written statement explaining why electronic submission is not possible or feasible. The Employer must also electronically serve the list on the other parties. To file electronically, go to **www.nlrb.gov**, click on *E-File Case Documents*, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list is on the sending party. If you have questions about the submission, please promptly contact the Board agent investigating the petition.

Service of the List - The list must be served on the parties named in the Decision and Direction of Election within 2 business days after issuance of the Decision, unless another date has been specified. 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 Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

The parties are not allowed to use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 36
Green-Wyatt Federal Building
1220 SW 3rd Avenue, Suite 605
Portland, OR 97204-2170

Agency Website: www.nlrb.gov
Telephone: (503)326-3085
Fax: (503)326-5387

Download
NLRB
Mobile App

January 12, 2023

URGENT

503RWP@gmail.com
Mark Medina, Organizer
Restaurant Workers of Portland
2249 E. Burnside St.
Portland, OR 97214

Re: Potbelly Sandwich Shop
Case 19-RC-310218

Dear Mr. Medica:

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 Michael Mols whose telephone number is (503)326-3171. 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 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 **9:00 AM** on **Thursday, February 2, 2023 by way of video hearing or teleconference (Zoom),** 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 **Friday, January 20, 2023** 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 is 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 Pacific Time** on **January 25, 2023.** 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 Pacific Time** on **January 30, 2023.** 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 Pacific 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.

Controlled Unclassified Information (CUI): This National Labor Relations Board (NLRB) proceeding may contain Controlled Unclassified Information (CUI). Subsequent information in this proceeding may also constitute CUI. National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

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,

RONALD K. HOOKS
Regional Director

By:
JESSICA DIETZ
Officer in Charge

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)
7. Description of Voter List Requirement after Hearing in Certification and Decertification Cases (Form 5580)

Form NLRB-5492
(Rev: 12-2015)

National Labor Relations Board

NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Teamsters Local Union No. 305 has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 19-RC-310218 seeking an election to become certified as the representative of the employees of Potbelly Sandwich Shop in the unit set forth below:

Included: Full-time and part time employees including shift leads.

Excluded: Supervisors, managers and guards.

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 (503)326-3085.

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 19

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

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 9:00 AM on **Thursday, February 2, 2023** and on consecutive days thereafter until concluded, by way of video hearing or teleconference (Zoom), 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, Potbelly Sandwich Shop 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** Pacific time on January 25, 2023**.** Following timely filing and service of a Statement of Position by Potbelly Sandwich Shop, 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** Pacific on January 30, 2023.

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** Pacific 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 12, 2023

RONALD K. HOOKS
Regional Director

By: _____
Jessica Dietz, Officer in Charge
NLRB, Subregion 36
Green-Wyatt Federal Building
1220 SW 3rd Avenue, Suite 605
Portland, OR 97204

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

AFFIDAVIT OF SERVICE OF: Petition dated January 12, 2023**, Notice of Representation Hearing dated** January 12, 2023**, 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 12, 2023, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

mike.narramore@potbelly.com
Miriam Arteaga Ochoa, General Manager
Mike Narramore, HR Representative
Potbelly Sandwich Shop
802 SW 6th Ave.
Portland, OR 97204

503RWP@gmail.com
Mark Medina, Organizer
Restaurant Workers of Portland
2249 E. Burnside St.
Portland, OR 97214

January 12, 2023	Kristy Kennedy Designated Agent of NLRB
Date	Name
	Kristy Kennedy 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
19-RC-310218	January 12, 2023

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 hat 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 contes ing their eligibility.

5. Is there a bar to conducting an election 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 he petition who remain employed as of the date of the filing of the pe ition. (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 19-RC-310218

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
19-RC-310218	January 12, 2023

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 o her 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.

FORM NLRB-5580
(6-20)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF VOTER LIST REQUIREMENT AFTER HEARING IN CERTIFICATION AND DECERTIFICATION CASES

If an election is directed, the employer must provide the voter list. To be timely filed and served, the voter list must be *received* by the Regional Director and the parties named in the Decision and Direction of Election within 2 business days after the issuance of the Decision unless a longer period, based on extraordinary circumstances, is specified in the Decision and Direction of Election. A certificate of service on all parties must be filed with the Regional Director when the voter list is filed. The region will not serve the voter list.

List Contents - The list must include 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 all eligible voters). The Employer must also include in separate sections of that list the same information for those individuals the parties have agreed will be permitted to vote subject to challenge or those individuals who, according to the Decision and Direction of Election, will be permitted to vote subject to challenge.

List Format - The list must be in an electronic format approved by the General Counsel, unless the Employer certifies that it does not have the capacity to produce the list in the required format. Accordingly, 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. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at: **www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.

It may be appropriate for the Employer to produce multiple versions of the list where the data required is kept in separate databases or files so long as all of the lists link the information to the same employees, using the same names, in the same order and are provided within the allotted time. If the Employer provides multiple lists, the list used at the election will be the list containing the employees' names and addresses.

Filing of the List - The voter list must be filed electronically by submitting (E-Filing) it through the Agency's website (**www.nlrb.gov**), unless the Employer provides a written statement explaining why electronic submission is not possible or feasible. The Employer must also electronically serve the list on the other parties. To file electronically, go to **www.nlrb.gov**, click on *E-File Case Documents*, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list is on the sending party. If you have questions about the submission, please promptly contact the Board agent investigating the petition.

Service of the List - The list must be served on the parties named in the Decision and Direction of Election within 2 business days after issuance of the Decision, unless another date has been specified. 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 Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

The parties are not allowed to use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

and
Restaurant Workers of Portland

CASE 19-RC-310218

Potbelly Sandwich Shop

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF Potbelly Sandwich Shop

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☐ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Kyle Abraham

MAILING ADDRESS: 222 SW Columbia Street, Suite 1500
Portland OR

E-MAIL ADDRESS: kyle.abraham@ogletree.com

OFFICE TELEPHONE NUMBER: 5035522177

CELL PHONE NUMBER: _____ *FAX:* 2221500

SIGNATURE: _____
(Please sign in ink.)

DATE: Thursday, January 12, 2023 5:38 PM Pacific Standard Time

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

Form NLRB-5492
(12-2021)

Junta Nacional de Relaciones del Trabajo

AVISO DE PETICIÓN DE ELECCIÓN

Este aviso es para informar a los empleados que Restaurant Workers of Portland ha presentado una petición ante la Junta Nacional de Relaciones de Trabajo (NLRB por sus siglas en inglés), una agencia Federal, en el Caso 19-RC-310218 solicitando una elección para certificarse como el representante de los empleados de Potbelly Sandwich Shop en la unidad mencionada a continuación:

Included: Full time and par time employees including shift leads.

Excluded: Supervisors, managers, and guards.

Este aviso también les proporciona información básica acerca de sus derechos conforme a la Ley Nacional de Relaciones del Trabajo, la tramitación de la petición y las reglas para mantener las elecciones de la NLRB justas y honestas.

USTED TIENE EL DERECHO conforme a La Ley Federal

- **A organizarse**
- **A formar, unirse o ayudar a organizaciones laborales.**
- **A negociar colectivamente a través de representantes de su elección.**
- **De actuar conjuntamente con fines de negociación colectiva u otra ayuda o protección mutua.**
- **A negarse a hacer cualquiera de estas cosas o todas ellas, a menos que la unión y el empleador, en un estado donde se permitan tales acuerdos, entren en un acuerdo legal de seguridad sindical que requiera que los empleados paguen cuotas periódicas y de iniciación. A los no afiliados que informen a la unión de que se oponen al uso de pagos para fines no representativos, se les puede pedir que paguen sólo su parte de los costos de las actividades de representación de la unión (como la negociación colectiva, la administración del contrato y los ajustes de quejas).**

LA TRAMITACIÓN DE ESTA PETICIÓN

Las elecciones no necesariamente ocurren en todos los casos después de la presentación de una petición. TODAVÍA NO SE HA TOMADO NINGUNA DECISIÓN FINAL sobre la idoneidad de la unidad propuesta o sobre si se llevará a cabo una elección en este asunto. Si es apropiado, la NLRB primero verá si las partes entran en un acuerdo de elección que especifique el método, la fecha, la hora y lugar de una elección y la unidad de empleados elegibles para votar. Si las partes no llegan a un acuerdo de elección, normalmente se celebra una audiencia para recibir pruebas sobre la idoneidad de la unidad y otros asuntos en disputa. Después de la audiencia, la NLRB puede ordenar una elección si es apropiado.

SI SE CELEBRA UNA ELLECIÓN, ésta se llevará a cabo por la NLRB mediante votación secreta y los Avisos de Elección serán publicados antes de la elección dando detalles completos para la votación.

REGLAS DE ELECCIÓN

La NLRB aplica reglas que pretenden mantener sus elecciones justas y honestas y que resulten en una elección libre. Si los agentes de cualquiera de las partes actúan de tal manera que interfieren con su derecho a una elección libre, la elección puede ser anulada por la NLRB. Cuando procede, la NLRB ofrece otros remedios tales como la reincorporación de los empleados despedidos por ejercer sus derechos, incluyendo el pago retroactivo de la parte responsable de su despido.

Los siguientes son ejemplos de conductas que interfieren con los derechos de los empleados y que pueden resultar en la anulación de la elección:

- **Amenazar con la pérdida de trabajo o beneficios por parte de un empleador o una unión.**
- **Prometer o concede promociones, aumentos de salario u otros beneficios, para influir en el voto de un empleado por una parte capaz de llevar a cabo dichas promesas.**
- **El despido de empleados por parte de un empleador para desalentar o fomentar la actividad sindical o el despido por parte de una unión para fomentar la actividad sindical.**
- **Hacer discursos de campaña ante grupos de empleados en horas de trabajo, donde la asistencia es obligatoria, dentro del periodo de 24 horas antes de que se abran por primera vez los centros de votación o, si las elecciones se celebran por correo, desde la hora y la fecha en que está previsto que la Región envíe las papeletas hasta la hora y la fecha fijadas para su devolución.**
- **Incitación de prejuicios raciales o religiosos por parte de un empleador o una unión mediante llamamientos incitantes.**
- **Amenazar con fuerza física o violencia a los empleados por parte de una unión o un empleador para influir en sus votos.**

Por favor, tenga la certeza de que, SI SE LLEVA A CABO UNA ELECCIÓN, se hará todo lo posible para proteger su derecho a la libre elección conforme a la ley. No se permitirán conductas inapropiadas. Se espera que todas las partes cooperen plenamente con la NLRB en el mantenimiento de los principios básicos de una elección justa como lo exige la ley. La NLRB, como agencia del Gobierno de los Estados Unidos, no respalda ninguna opción en la elección.

Para obtener más información sobre la tramitación de peticiones, visite www.nlrb.gov o póngase en contacto con la NLRB al (503)326-3085.

ESTE ES UN AVISO OFICIAL DEL GOBIERNO Y NO DEBE SER MUTILADO POR NADIE. DEBE PERMANECER PUBLICADO CON TODAS LAS PÁGINAS VISIBLES SIMULTANEAMENTE HASTA QUE SEA REEMPLAZADO POR EL AVISO DE ELECCION O LA PETICION SEA DESESTIMADA O RETIRADA.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

POTBELLY SANDWICH SHOP

Employer

and **Case 19-RC-310218**

RESTAURANT WORKERS OF PORTLAND

Petitioner

ORDER CHANGING TIME OF HEARING

IT IS HEREBY ORDERED that the time of the hearing in the above-entitled matter scheduled to be held on February 2, 2023, and consecutive days thereafter by way of video hearing or teleconference (Zoom) is changed from 9:00 AM to 10:00 AM.

Dated at Portland, Oregon this 31st day of January, 2023.

RONALD K. HOOKS
Regional Director

By: _____
Jessica Dietz, Officer in Charge
NLRB, Subregion 36
Green-Wyatt Federal Building
1220 SW 3rd Avenue, Suite 605
Portland, OR 97204

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

AFFIDAVIT OF SERVICE OF: Order Changing Time of Hearing, dated January 31, 2023.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 31, 2023**,** I served the above-entitled document(s) by **e-service** upon the following persons, addressed to them at the following addresses:

Mike Narramore, HR Representative
Miriam Arteaga Ochoa, General Manager
Potbelly Sandwich Shop
802 SW 6th Ave.
Portland, OR 97204
mike.narramore@potbelly.com

Mark Medina, Organizer
Restaurant Workers of Portland
2249 E Burnside St.
Portland, OR 97214
503rwp@gmail.com

Kyle T. Abraham, Attorney
Ogletree Deakins Nash Smoak &
Stewart, PLLC
222 SW Columbia St., Ste. 1500
Portland, OR 97201-6641
kyle.abraham@ogletree.com

January 31, 2023
Date

Kristy Kennedy
Designated Agent of NLRB
Name

Kristy Kennedy
Signature

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 19, SUBREGION 36

In the Matter of:

Potbelly Sandwich Works, LLC, Case No. 19-RC-310218

Employer,

and

Restaurant Workers of Portland,

Petitioner.

Place: Portland, Oregon (Via Zoom Videoconference)

Dates: February 2, 2023

Pages: 1 through 148

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 19, SUBREGION 36

In the Matter of: POTBELLY SANDWICH WORKS, LLC, Employer, and RESTAURANT WORKERS OF PORTLAND, Petitioner.	Case No. 19-RC-310218

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **EMILY WIANT**, Hearing Officer, at the National Labor Relations Board, Region 19, Subregion 36, Green-Wyatt Federal Building, 1220 SW 3rd Avenue, Suite 605, Portland, Oregon on **Thursday, February 2, 2023, 10:22 a.m.**

1 **A P P E A R A N C E S**

2 **On behalf of the Employer:**

3 **KYLE T. ABRAHAM, ESQ.**
OGLETREE DEAKINS
4 222 SW Columbia St, Ste 1500
Portland, OR 97201
5 Tel. (503)552-2140

6 **On behalf of the Petitioner:**

7 **MARK MEDINA, ORGANIZER**
RESTAURANT WORKERS OF PORTLAND
8 249 E. Burnside St
Portland, OR 97214
9 Tel. (971)239-3606

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1 **I N D E X**

2

3 WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
4 Nicole Shaughnessy	13				
5 Starr McKinnis	74				
6 Miriam Arteaga	107				

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1 **E X H I B I T S**

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3 EXHIBIT	IDENTIFIED	IN EVIDENCE
4 **Board:**		
5 B-1(a) through 1(f)	6	6
6 B-2	6	7
7 B-3	9	10
8 B-4	144	144
9		
10 **Employer:**		
11 E-1	16	16
12 E-2	17	25
13 E-3	25	26
14 E-4	31	32
15 E-5	33	40
16 E-6	43	48
17 E-7	48	52
18 E-8	57	61

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1 **P R O C E E D I N G S**

2 HEARING OFFICER WIANT: The hearing will be in order.
3 This is a formal hearing in the matter of Potbelly Sandwich
4 Works, LLC, case number 19-RC-310218 before the National Labor
5 Relations Board. The hearing officer appearing for the
6 National Labor Relations Board is Emily Wiant, W-I-A-N-T.
7 All parties have been informed of the proceedings --
8 procedures at formal hearings before the Board by service of
9 the description of procedures and certification and
10 decertification cases with the notice of hearing. I have
11 additional copies I can email out for distribution if any party
12 wants them.
13 Will Counsel for -- will Counsel please state their
14 appearances for the record, for the Petitioner?
15 MR. MEDINA: Mark Medina.
16 HEARING OFFICER WIANT: And for the Employer?
17 MR. ABRAHAM: Kyle Abraham, with the firm Ogletree
18 Deakins.
19 HEARING OFFICER WIANT: Are there any other appearances?
20 Let the record show, no response.
21 Are there any other persons, parties or labor
22 organizations in the hearing room who claim in interest in this
23 proceeding? Let the record show, no response.
24 As a reminder, we are here today to create a clear,
25 written transcript, which is -- which can be a bit challenging

1 via video conferencing. I do ask that the parties not speak
2 over one another or over myself. And please, also, briefly
3 pause before answering any questions.
4 Now, I propose to receive the formal papers. They have
5 been marked for identification as Board Exhibits 1 -- Exhibits
6 1(a) through 1(f) inclusive, Exhibit 1(f) being an index and a
7 description of the entire exhibit. The exhibit has already
8 been shown to all parties.
9 Are there any objections to the receipt of theses exhibits
10 into the record? Employer?
11 MR. ABRAHAM: None for the Employer.
12 HEARING OFFICER WIANT: Petitioner?
13 MR. MEDINA: No.
14 HEARING OFFICER WIANT: Hearing no objections, the formal
15 papers are received into evidence.
16 **(Board Exhibit Number 1(a) through 1(f) Received into Evidence)**
17 HEARING OFFICER WIANT: Are there any other -- are there
18 any motions to intervene in these proceedings to be submitted
19 to the hearing officer for ruling by the Regional Director at
20 this time? Let the record show, no response.
21 Are there any pre-hearing motions made by any party that
22 need to be addressed at this time? Let the record show, no
23 response.
24 The parties to this proceeding have executed a document
25 which is now marked as Board Exhibit 2. That exhibit contains

1 a series of stipulations including among other things, the
2 Petitioner is a labor organization within the meaning of the
3 Act. There is no contract bar and the Employer meets the
4 jurisdictional standards of the Board.
5 Are there any objections of the receipt of Board Exhibit
6 2?
7 MR. ABRAHAM: Not for the Employer.
8 HEARING OFFICER WIANT: Hearing no objection, the Board
9 Exhibit 2 is received into evidence.
10 **(Board Exhibit Number 2 Received into Evidence)**
11 HEARING OFFICER WIANT: As far as I understand, the
12 parties agree at a minimum. At a minimum, the appropriate unit
13 should at least include full-time and regular part-time
14 associates and certified trainers employed by the Employer at
15 its store located at 8002 Southwest 6th Ave. in Portland,
16 Oregon. This is included in Board Exhibit 2. Is that correct?
17 MR. ABRAHAM: Yes. That's correct.
18 MR. MEDINA: Yes.
19 HEARING OFFICER WIANT: The parties have not agreed
20 whether the shift leader classification does or does not have
21 supervisory authority within the meaning of section 2(11) of
22 the Act, and that serves as the purpose of why we are here
23 today? Is that correct?
24 MR. ABRAHAM: From the Employer's perspective, that is a
25 correct statement of the issue for today.

1 HEARING OFFICER WIANT: Petitioner, is that a correct
2 statement?
3 MR. MEDINA: Yeah, yeah.
4 HEARING OFFICER WIANT: Thank you. Are there any other
5 petitions pending in other regional offices include -- or
6 involving other facilities of the Employer that impact this
7 hearing? Let the record show, there are no other cases pending
8 in other regions relevant to this proceeding.
9 The parties are reminded that prior to the close of the
10 hearing, the hearing officer will solicit the parties positions
11 on election details, including the type, mail, manual or
12 partial mail, manual -- best days of the week, times and
13 locations for conducting the election. Any dates in which the
14 election could not be -- could not occur, including said
15 reasons, why and how to conduct the -- or where and how to
16 conduct the count of the ballots, and the eligibility period
17 including the most recent payroll ending date, and the
18 frequency of such pay periods, but we will not permit
19 litigation of these issues.
20 The hearing officer will also inquire for the need of
21 foreign language ballots and notices of election, and the
22 proposed number of observers for each part at the polling
23 period, including the reasons.
24 Please have all of the relevant information with respect
25 to these issues available at that time. The parties are

1 advised that the hearing will continue day-to-day as necessary
2 until completed until the -- or unless the Regional Director
3 concludes that extraordinary circumst -- circumstances warrant
4 otherwise.
5 The parties are also advised upon request, any party is
6 entitled to a reasonable period at the close of the hearing for
7 oral arguments, which shall be included in the transcript for
8 the hearing. Any part desiring to submit a brief to the
9 Regional Director shall be entitled to do so within five
10 business days. After the close of the hearing -- or five
11 business days after the close of the hearing. Prior to the
12 close of the hearing and for good cause, the hearing officer
13 may grant an extension at this time.
14 The Employer has completed, and I have marked for
15 identification Board Exhibit 3, a statement of position on this
16 matter.
17 In this position statement the Employer asserts that the
18 petition for grot -- voting group is an appropriate as the
19 Employer asserts that the shift leader classification should be
20 excluded from the unit given from the classification unit
21 includes section 2(11) supervisors, as noted in Board Exhibit
22 2.
23 Is that correct, Mr. Abraham?
24 MR. ABRAHAM: That is correct.
25 HEARING OFFICER WIANT: Are there any objections to the

1 receipt of this exhibit into the record? Hearing no
2 objections, the Board Exhibit 3 is received.
3 **(Board Exhibit Number 3 Received into Evidence)**
4 HEARING OFFICER WIANT: The Petitioner has not completed a
5 responsive statement of position.
6 Do I have that correct, Mr. Medina?
7 MR. MEDINA: That's correct.
8 HEARING OFFICER WIANT: As a re -- result of the
9 noncompletion of the RSOP, the Union is precluded from
10 litigating any issues of this hearing.
11 Is there anything else we need to discuss at this point?
12 Wonderful.
13 The Regional Director has decided that the following
14 issues will be litigated in this preceding. The inclusion or
15 the exclusion of the shift leader classification as it relates
16 to the classifications 2(11) status. Please be aware that
17 supervisory status involves a statutory exclusion. The parties
18 seeking to exclude this classification bears the burden of
19 proof. You must present specific detailed evidence in support
20 of your position. General conclusionary statements by
21 witnesses will not be sufficient. Are parties ready -- ready
22 to present the evidence?
23 Mr. Abraham?
24 MR. ABRAHAM: Yes. We are.
25 HEARING OFFICER WIANT: The Employer may present your

1 first wit -- first witness, so I may swear them in.

2 MR. ABRAHAM: All right. The Employer presents Ms. Nicole

3 Shaughnessy.

4 HEARING OFFICER WIANT: Ms. Shaughnessy, my name is Emily

5 Wiant, and I am the hearing officer today. Will you please

6 raise your right hand.

7 Whereupon,

8 **NICOLE SHAUGHNESSY**

9 having been duly sworn, was called as a witness herein and was

10 examined and testified as follows:

11 HEARING OFFICER WIANT: Now, Ms. Shaughnessy, is there

12 anyone in the room with you today while you're providing your

13 testimony outside of your legal representative?

14 THE WITNESS: Two employees.

15 HEARING OFFICER WIANT: As mentioned to the parties -- you

16 can put down your hand.

17 As mentioned to the parties at the beginning of the

18 hearing, we're really looking to create a clear, written

19 transcript from video conferencing, which can be a little bit

20 more difficult. So I will request you do your best to pause

21 for about two seconds after you've been asked a question and

22 before you answer.

23 This is also to give an opportunity for another party to

24 object to a question that is being asked, which I will then

25 handle, so please do not answer the question right away. If

1 you do hear the word objection, just -- just hold off until I
2 let you -- let you go.
3 Is that understood?
4 THE WITNESS: Yes.
5 HEARING OFFICER WIANT: Wonderful.
6 Mr. Abraham, your witness.
7 MR. ABRAHAM: Okay. And given that it is a virtual
8 hearing, in my experience, hearing officers have dealt with
9 exhibits in different ways. We have a total of eight exhibits
10 from the Employer. Would you mind sharing what your preference
11 is, Madam Hearing Officer, with respect to disclosing the
12 exhibits.
13 My preference would be as they come up, I can introduce
14 them to the witness and email them to the parties. If
15 that's -- if you'd like to handle it any other way, I'm
16 flexible.
17 HEARING OFFICER WIANT: That's works just fine, Mr.
18 Abraham. Go ahead and email them as they come up.
19 MR. ABRAHAM: Okay.
20 HEARING OFFICER WIANT: And you have everyone's email
21 address, correct?
22 MR. ABRAHAM: When we say everyone, I have the email
23 address listed on the petition 503RWP@gmail.com is what I had
24 intended to send the Petitioner. And then I have, obviously,
25 your email address as well.

1 HEARING OFFICER WIANT: Mr. Medina?

2 MR. MEDINA: That would be -- that email address is fine.

3 That works.

4 HEARING OFFICER WIANT: Wonderful.

5 Your witness, Mr. Abraham?

6 **DIRECT EXAMINATION**

7 Q BY MR. ABRAHAM: Okay. Can you please start by saying and

8 spelling your name for the record.

9 A Nicole Shaughnessy, N-I-C-O-L-E S-H-A-U-G-H-N-E-S-S-Y.

10 Q Okay. And Ms. Shaughnessy, can you tell me who is your

11 Employer?

12 A Potbelly Sandwich Works.

13 Q Okay. And what is your current position?

14 A Regional director.

15 Q How long have you worked for Potbelly?

16 A 18 years.

17 Q During those 18 years, what positions have you held?

18 A Assistant manager, general manager, general manager

19 training leader, district manager, market manager, regional

20 manager, regional director.

21 Q Okay. And in that list, I've heard you included district

22 manager?

23 A Correct.

24 Q How long were you district manager?

25 A Six years.

1 Q Presently, are you serving as a interim district manager
2 in addition to your role as the regional director?
3 A Correct.
4 Q And what district are you serving as the interim district
5 manager?
6 A Portland.
7 Q And how long have you been serving in that capacity?
8 A Four days.
9 Q All right. And previously, was there a full-time Potbelly
10 employee in that position as the regional district -- excuse
11 me, the district manager?
12 A Correct.
13 Q Okay. Let's talk about the role of the district manager.
14 What are the job responsibilities of the district manager over
15 the Portland region?
16 A The job responsibilities include managing all of the
17 general managers in the shop. They're responsible for
18 recruiting, selection, training, building, and inspiring their
19 teams. They're also responsible for customer service and
20 making sure our scores reflect great service. They're also in
21 charge of achieving sales and profit budgets.
22 Q Okay. All right. I want to turn to the Yamhill stores,
23 I'll refer to it. When I say the "Yamhill store", what does
24 that mean to you?
25 A That is our location at the 6th and -- oh, I'm sorry --

1 6th and Yamhill location.
2 Q Okay. And are you aware that there is a petition filed by
3 a labor organization to represent the employees at that store?
4 A Yes.
5 Q I want to spend some time talking about the operations at
6 the Yamhill store. What's generally the mission statement for
7 that store?
8 A To make people really happy.
9 Q Okay. And what are the hours of operations?
10 A 7 a.m. to 9 p.m. or I'm sorry, 8 p.m. excuse me.
11 Q And what days of the week?
12 A Monday through Sunday.
13 Q Within those operations, what shifts are employees
14 assigned to work there?
15 A Shifts include starting at 6 a.m. in the morning about an
16 hour before they open and staying through until 10 p.m. at
17 night, an hour after we close or -- I'm sorry -- 9 p.m. at
18 night, an hour after we close.
19 Q Okay. And in total including the general managers,
20 assistant general manager, about how many employees work at
21 that store?
22 A 16.
23 Q Okay. I'm going to go ahead and email the parties and
24 share my script here -- or share my screen with Employer
25 Exhibit 1. If you can go ahead and take a look at what's

1 marked for identification at this point as Employer's Exhibit
2 1. Do you reco -- do you see that document?
3 A Yes.
4 Q Can you see it? And -- and what is this document?
5 A This is our shop roster.
6 Q Okay. And what classifications are staff at the Yamhill
7 store?
8 A We have associates, certified trainers, shift leaders, and
9 assistant managers, and a general manager.
10 MR. ABRAHAM: At this point, I'd move for admission of
11 Employer Exhibit 1.
12 HEARING OFFICER WIANT: Are there any issues with the
13 exhibit of -- of Employer Exhibit 1?
14 MR. ABRAHAM: Well -- candidly, Hearing Officer, given the
15 preclusion, I think that's just a question only for you.
16 HEARING OFFICER WIANT: Move for Exhibit Employer -- move
17 for entrance of Employer Exhibit 1. I have a copy and I can
18 sent it to Bruce.
19 **(Employer Exhibit Number 1 Received into Evidence)**
20 MR. ABRAHAM: Okay.
21 Q BY MR. ABRAHAM: And on the roster, does that list -- the
22 classification sort of supervisory higher ups to cull order?
23 A Yes. It does.
24 Q Okay. And how many employ -- let me stop sharing that
25 now. About how many employees are present in the store at any

1 typical shift?
2 A It can vary between two to three, all the way up to eight
3 to ten, depending on different parts of the day and sales
4 volume.
5 Q Okay, all right. Let's talk a little bit about the type
6 of work that employees perform. I'm going to show you what's
7 been marked for identification as Employer Exhibit 2. And I'll
8 see if I can set it up to be viewed as a -- page here. So I'll
9 proffer that this is a 13-page document.
10 Do you see what I'm showing you here?
11 A Yes.
12 Q Okay. And it says "Non-Drive Thru Shops - 2" there. Do
13 you recognize that?
14 A Yes.
15 Q What is this document?
16 A So this is deployment map. This details different
17 positions that are worked throughout a shift.
18 Q Okay. And when you say positions that are worked,
19 nomenclature within the shop, are those called stations?
20 A Correct.
21 Q Okay. So we'll have a station of load 1 in the top left
22 corner?
23 A Correct.
24 Q And the diagram is kind of designed as far as the way a
25 store is laid out?

1 A Correct.
2 Q Okay. And then the load 2, right next to that?
3 A Correct.
4 Q And then there's a grey box. What's the grey box?
5 A That is our oven.
6 Q Okay. So as the foot traffic of a customer comes in, the
7 first station that a customer would go to would be --
8 A Load 1.
9 Q Load 1? There's also -- I'm going to kind of skip to the
10 far right side of this. There's also what's called a box with
11 the word "fronter" in it. Do you see that?
12 A Yes.
13 Q And what is a fronter?
14 A A fronter is an associate that takes care of the dining
15 room. They clean tables, clean bathrooms, greet our customers,
16 sweep floors -- just maintain a very clean and sanitary
17 environment.
18 Q Okay. So as far as stations go -- a station that may be
19 filled by an associate would be a fronter position as well?
20 A Correct.
21 Q And a customer coming into the store, that might be their
22 first contact, would be an associate in the station of fronter?
23 A Correct.
24 Q Then they would come up to the load 1. And what happens
25 at load 1?

1 A At load 1, the associate greets the customer and takes
2 their order and prepares either a sandwich or calls out another
3 item that they ordered to further down the line. And that is
4 the synopsis of that station.
5 Q Okay. And what would be -- let's take a minute to talk
6 about that. If there's another item, what item might be called
7 out?
8 A A shake -- a milkshake that is ordered or a soup that is
9 ordered -- or any extras on the sandwich, like bacon or
10 avocado.
11 Q I'm going to scroll down as we go through here, so we can
12 see a screen that probably is more indicative. Again, if you
13 can remind me about how many employees are on at any particular
14 shift at Yamhill store?
15 A Anywhere from two to ten.
16 Q Okay. So let's take one that's kind of closer to probably
17 about five, kind of in the middle there. So we've got load 1
18 we talked about. What would load 2 be?
19 A Load 2 assists load 1 -- they usually put the cheese on
20 top of the meat, plus the meat making sure that the sandwich is
21 prepared and ready to go. And then they place it into the
22 oven.
23 Q Okay. The next station we have on the diagram here would
24 be "Dress". And that's on the other side of the oven. Is that
25 correct?

1 A Correct.
2 Q And what is the kind of role of that station -- the Dress
3 station?
4 A Sure. The dresser greets the customer again. Asks the
5 customer what type of toppings that they would like on their
6 sandwich. They assemble the sandwich and hand the sandwich
7 over to the customer. They're also responsible for making
8 salads as well.
9 Q Okay. And then we have "Cash" as a station. What happens
10 at this station of cash?
11 A That is where the cashier greets the customer. They ring
12 the customer's order up on the till. They bag up any items.
13 They might hand over a soup or a milkshake, and they thank the
14 customer and send them on their way.
15 Q Okay. What about -- now, looking at the bottom of the
16 diagram here; we have a "Backload". What is that station?
17 A Backload is intended for an associate to prep orders, to
18 start orders for catering.
19 Q Could online orders be done at the backloader as well?
20 A Correct.
21 Q Okay. And there's a second oven in the store. Is that
22 correct?
23 A Correct.
24 Q And then there's also a "Back Dress"? Is that an
25 associate station as well?

1 A Correct.
2 Q Okay. What's done at the receiver assembler station?
3 A So that is an area where an associate manages the online
4 orders or catering. They're the ones that are putting the
5 sandwiches in the boxes for delivery. They're collecting
6 cookies, napkins, utensils and putting it together and
7 packaging so it could be sent out to the customer.
8 Q Okay. There's also "Shakes/Soups", as a station. Can you
9 explain that station?
10 A Yes. So shakes and soup are two additional associate
11 positions that we have. That's where somebody is assigned to
12 just collecting soup and portioning it and putting it in cups.
13 And then also, mak -- making the milkshakes from scratch.
14 Q Okay. I think we covered all of the -- the stations that
15 are listed on here as far as the different assignments that are
16 available for associates to do. And is this how the Yamhill
17 store is set up?
18 A Yes.
19 Q The diagram also has a -- in the middle on the right-hand
20 side of the box -- grey M in the circle. And then there's the
21 key that talks about that as being the MIC. What does "MIC"
22 stand for?
23 A Manager in charge.
24 Q Okay. And are shift leaders managers, MICs?
25 A Yes.

1 Q Is there an associate assigned to every station every
2 shift?
3 A Yes.
4 Q And if there's a -- a -- let me ask kind of some questions
5 about qualifications for associates to be at that shifts. Are
6 associates qualified -- some sort of training to be assigned to
7 a shift?
8 A Yes.
9 Q And how does that qualification work?
10 A The associate is trained on the station that they work.
11 Our goal is to have our associates trained on three stations
12 within three months?
13 Q Okay. And do you know, in fact, if that's the case at the
14 Portland -- the Yamhill store right now. Are all the
15 associates trained in at least three?
16 A Depending on when they started with the company, so there
17 might be some variance in the three stations in three months.
18 Q Okay. Let's talk about the -- now that we've got sort of
19 the layout of the stations and some of that work that's done --
20 I'm guessing that there's other tasks that at some point in
21 time during the day associates are assigned to do as well,
22 correct?
23 A Correct.
24 Q On the station -- we haven't talked about clean-up or
25 opening or closing or restocking or any of those. Are those

1 also tasks that are associates are assigned to throughout the
2 day?
3 A Correct.
4 Q Okay. Let's pivot now. I want to talk about shift leader
5 classification, itself. Are you familiar with the shift leader
6 classification?
7 A Yes.
8 Q And how are you familiar with it?
9 A That is a position that is included in our store roster in
10 Yamhill. It is the first management position that we have in
11 our organization.
12 Q Okay. And when you say management, you mean kind of a
13 supe --
14 A A supervisor, correct.
15 Q Have you ever trained individuals in the first level
16 supervisor or shift leader position?
17 A Yes.
18 Q And I'm going to at this point, I'll go ahead and scroll
19 all the way through the 4 -- 13 pages, but I'm going to move
20 for -- I'm going to ask that -- well, let me ask this just for
21 clarification. As we go through this exhibit, it moves from
22 two, to three, to four, to five, to six, to seven, to eight --
23 do you see that?
24 A Yes.
25 Q What does that and all the way up to 9, 11 -- all the way

1 up to 13, and what does that entail, and 14?
2 A The number entails how many employees are scheduled at one
3 time?
4 Q Okay. And then there's also this kind of chart at the
5 bottom that talks about primary responsibility. Explain that
6 for us.
7 A This details within that number of employees on the line
8 how to -- a suggestion of where to place who during that
9 particular shift.
10 Q Well, is it a suggestion of how to place who, or once an
11 employee's placed there what the associate would do?
12 A Correct.
13 Q Wha -- which one?
14 A Once the associate is placed there, that is what they
15 would do for their -- for their shift.
16 Q Does this have anything to do with directing of which
17 associate should be assigned to which station?
18 A No.
19 Q Okay. We'll talk about that in a little bit here. All
20 right.
21 MR. ABRAHAM: So I'm going to offer Exhibit 2, Employer's
22 Exhibit 2.
23 HEARING OFFICER WIANT: I have one question about this
24 exhibit. Are these -- are these pages used at the store?
25 THE WITNESS: Yes.

1 HEARING OFFICER WIANT: So each day there's a new -- a
2 fresh page up?
3 THE WITNESS: Yes.
4 HEARING OFFICER WIANT: Understood. And Mr. Abraham,
5 you're going to get to how these are assigned?
6 MR. ABRAHAM: Correct.
7 HEARING OFFICER WIANT: Okay. Board Exhibit 2, Employer's
8 Board Exhibit 2 is entered into the record. I do not have a
9 copy of that.
10 **(Employer Exhibit Number 2 Received into Evidence)**
11 MR. ABRAHAM: Let me take a minute to email it to -- okay.
12 Let's continue on.
13 Q BY MR. ABRAHAM: Let's talk about the shift leader role
14 itself. Is there a job description for the shift leader
15 description?
16 A Yes.
17 Q I'm sharing my screen as what's been marked for
18 identification at this point as Employer Exhibit 3. I will
19 scroll through here. Do you recognize this document?
20 A Yes.
21 Q And what is this document?
22 A This details all of the accountabilities, job duties that
23 pertain to the shift leader job description or role.
24 Q Okay. Can you generally describe the shift leader duties
25 here?

1 A Yes. A shift leader is responsible for leading and
2 supervising associates on the shift. They are in charge of
3 business flow, money, food prep, assigning accountabilities,
4 assigning dress stations for the shift, managing online orders,
5 and backline orders coming through and just the overall safety
6 of the shop as well.
7 Q Okay. Let's look -- drill down here a little bit where it
8 says in the box "focus" and then it says "people", and so this
9 is the duties of the shift leader that leads associates to run
10 great shifts including assigning tasks, cleaning, line duties,
11 opening and closing duties, and providing feedback and
12 training.
13 I want to spend some time going through each of those
14 steps and then, as well as, what's not listed there which is
15 a -- assigning stations. So assigning stations as we heard, if
16 I had it right, is also part of the shift leaders
17 responsibilities to assign stations to the associates, correct?
18 A Correct.
19 Q All right. Let's talk about the cleaning tasks first.
20 MR. ABRAHAM: And I'm going to go ahead and ask that
21 exhibit -- I think this is Exhibit 3 be admitted at this
22 point -- that would be offered at this point.
23 HEARING OFFICER WIANT: Please scroll through it. Exhibit
24 3 is entered into the record.
25 **(Employer Exhibit Number 3 Received into Evidence)**

1 MR. ABRAHAM: And then I'll take a minute and email
2 Exhibit 3. Okay.
3 Q BY MR. ABRAHAM: So let's talk about the cleaning duties,
4 when we look at Exhibit 3 there. What type of cleaning duties
5 are assigned to associates by shift leaders?
6 A There are many cleaning duties that are assigned by shift
7 leaders to associates. They can range from cleaning windows,
8 sweeping the dining room, wiping down tables, stocking
9 stations, food prep, washing dishes in the back, organizing,
10 just a variety of things that they can do.
11 Q Okay.
12 A Um-hum.
13 Q And throughout the shift, when would a shift leader assign
14 an associate to do that task?
15 A They can assign it at the beginning of the set --
16 beginning of the shift to help plan throughout the night. They
17 can assign the duties throughout the shift when it's needed, or
18 at the end of the shift while they're closing.
19 Q Okay. Let's kind of take an example here. So I think one
20 of the things is that you mentioned is about making sure that
21 the tables are clean. Throughout the shift, and not at the
22 designated opening, or kind of a post-peak checklist, we'll
23 talk about that later, or closing shift, how would a shift
24 leader decide whether there's a need to -- for someone to do a
25 task of, say, wiping down tables in the dining room area?

1 A It would be up to the shift leader's distinction if they
2 felt that that was needed at that time to assign the job duty.
3 Q So the shift leader would sort of inspect the kitchen --
4 or the dining room area and make a determination whether or not
5 somebody needs to clean it, or if it's clean enough?
6 A Correct.
7 Q Once they've -- the shift leaders now made that
8 determination, they've inspected the dining room, they see
9 that, yep, we need somebody to come out and wipe down tables,
10 what happens next?
11 A Then, they would assign the duty to the associate to
12 complete the job duty.
13 Q And -- and how do they make a decision of which associate
14 to assign a task to?
15 A It would be up to their own decision-making. They would
16 evaluate what associate would be best in that position and make
17 the call.
18 Q Do they have any direction from -- the -- the Potbelly's
19 or corporate, that it's the associate that's on station 1 is
20 always the associate who should be wiping down the -- the
21 dining room area?
22 A No. It's totally up to them to choose.
23 Q And how often throughout the course of a shift do these
24 sort of ad-hoc cleaning tasks come up?
25 A Oh, throughout the entire shift, often.

1 Q And every day?
2 A Every day.
3 Q So it's a regular routine occurrence?
4 A Yep, regular routine.
5 Q Okay. Now, I want to talk about the line duties, kind of
6 going back to the job description. It talked about that. The
7 shift leaders assign tasks, including line duties to
8 associates. What are line duties?
9 A Line duties pertain to a specific station that an
10 associate might be assigned to. The shift leader would
11 determine what kind of tasks needed to be done, like restocking
12 stations, cleaning the stations, pulling out the stations,
13 sweeping, mopping, just overall stocking and maintenance of the
14 station.
15 Q Okay. So even within -- and -- and we will get to how the
16 shift leaders assign which station, which associate will work
17 with, but even once you're at a station --
18 A Um-hum.
19 Q -- these are duties that the shift leader then assigns to
20 the employee who's at that station?
21 A Correct.
22 Q When would an associate be given the direction that, okay,
23 now you need to engage in some of these line duties and then --
24 and take those on?
25 A It would be once the shift lead told them to do so.

1 Q And -- and how does the shift lead make the assessment of
2 when he or she or they will give direction to the associate to
3 engage in some of the line-duty tasks?
4 A It is up to them to decide who they assign to the job
5 duties.
6 Q But --
7 A Um-hum.
8 Q -- if I'm on station -- say I'm on the back loader --
9 A Um-hum.
10 Q -- will I be assigned the line duties on the front loader
11 position in the station?
12 A If the shift lead determines that's what needs to be done,
13 the shift lead can decide to change different tasks of the
14 employees.
15 Q And does that actually happen?
16 A Yes.
17 Q Does it happen -- how frequently?
18 A Every day throughout the day.
19 Q And again, are shift leaders able to use their own
20 independent judgment in when a line duty is to be performed by
21 a associate?
22 A Yes.
23 Q How does the shift leader make that decision?
24 A They consider the associate's knowledge, their skill set,
25 their productivity. They would determine how much training the

1 associate has, and then their overall feeling and assessment of
2 the associate, their personal feelings.
3 Q And how do they develop that experience with the
4 associate?
5 A Through working side by side with them over a duration of
6 time.
7 Q Do shift leaders need to check in with an assistant
8 general manager or general manager before assigning cleaning
9 duties? Going back to cleaning duties.
10 A No.
11 Q Do they need to check in with assistant general manager or
12 general manager when assigning line duties?
13 A No.
14 Q Okay. I want to change gears now and kind of talk to you
15 about this schedule a little bit before we move into the --
16 some of the other tasks that are assigned. I'm going to share
17 my screen with Employer Exhibit 4. Okay.
18 So Employer Exhibit 4 is a one-page document. It's titled
19 "2.02 Manager Schedule". Do you see that document there,
20 scrolling down there?
21 A Yes.
22 Q And -- and what is this document?
23 A This is the employee schedule and manager's -- or I'm
24 sorry, this is the manager's schedule for the shop.
25 Q Okay. And what positions are listed on this schedule --

1 or classifications, I should say?
2 A Sure. The shift leader position, the assistant manager
3 position, and the general manager position.
4 Q Okay. Where are the associates?
5 A They are not listed on this schedule.
6 Q And why is that?
7 A Because they are not management for the shop. And they
8 are housed on the associate schedule.
9 Q Okay.
10 MR. ABRAHAM: All right. I'm going to offer Employer
11 Exhibit 4 at this time.
12 HEARING OFFICER WIANT: Employer Exhibit 4 is entered into
13 the record.
14 **(Employer Exhibit Number 4 Received into Evidence)**
15 Q BY MR. ABRAHAM: Okay. Previously we discussed the
16 cleaning and tasks and those sort of things. And those were
17 ones that were kind of, I think, I used the -- the phrase, and
18 I just want to make sure that it's consistent with the record
19 here, ad-hoc tasks.
20 A Correct.
21 Q So those -- everything that we've talked to you so far
22 about, you know, the cleaning and the line duties, those are
23 all just ad -- ad hoc as they come up throughout the course of
24 the shift?
25 A Correct.

1 Q And they occur all of the time throughout the course of
2 the day?
3 A Correct.
4 Q Are there specific tasks that a shift leader will assign
5 at particular intervals throughout a shift?
6 A Correct. Yes.
7 Q Are there certain checklists that remind asso -- shift
8 leaders that they need to assign certain tasks to associates?
9 A Yes.
10 Q And I'm going to go ahead and share my screen with what's
11 been marked as Employer Exhibit 5. It's a eight-page document
12 that purports to be a post-peak checklist. Do you see that
13 document?
14 A Yes.
15 Q Okay. I'm going to go ahead and scroll through.
16 MR. ABRAHAM: Actually, I'm going to take a minute before
17 I do that to ensure that I got Employer Exhibit 4 emailed to
18 the parties and the Board and the hearing officer. A lot
19 easier when you can just hand them across the table. But I'm
20 trying to learn new tricks. Okay. So I think Employer Exhibit
21 4 has been shared. And then, I will go ahead and share my
22 screen with Employer Exhibit 5.
23 Q BY MR. ABRAHAM: Let me to scroll through here again, the
24 post-pic checklist. Let me scroll down to this document. It's
25 got certain questions that it's posing. And -- and who reviews

1 this document?
2 A The shift leader and also the associates.
3 Q Okay.
4 A Um-hum.
5 Q And when we talk about them, who completes the post-peak
6 checklist?
7 A The shift leader or manager in charge.
8 Q Okay. And we've already talked about that. The shift
9 leaders are the managers in charge?
10 A Correct.
11 Q And we'll talk more about testimony from the assistant
12 general manager and the general manager about -- if that
13 varies, and if it doesn't, or what circumstance. Okay. So I
14 got the -- these questions are being posed. The shift leader
15 is the individual who is responsible for completing this, with
16 some questions about the customers, some questions about the
17 sales, questions about the profits here. I want to focus now
18 on the transition tasks. What are the transition tasks that
19 the shift leader will review as part of this post-peak
20 checklist?
21 A So the shift lead would determine what tasks needed to be
22 completed, usually between the times of, say, 2 and 5:00
23 midday, in order to prep and get ready for the evening business
24 of the night.
25 Q Okay. So for example, on this checklist, we have exterior

1 and patio clean and set.
2 A Yes.
3 Q And what is that?
4 A That is a task that would be assigned to an associate
5 during the mid-checklist.
6 Q Okay. And how would -- who would assign that task to an
7 associate?
8 A A shift leader.
9 Q How would a shift leader make a determination of whether
10 the exterior patio needs to be cleaned, or if it's clean enough
11 already or if it's set or if it's unset?
12 A It would be up to the discretion of the shift leader to
13 decide.
14 Q Okay. So if we're -- the shift leader now is walking
15 through this post-peak -- these tasks -- again, these are
16 separate from ad-hoc tasks?
17 A Correct.
18 Q And they make a determination of the exterior patio -- or
19 exterior patio need to be cleaned and set. How do they assign
20 that task to be done?
21 A So they would take into account, again, the skills,
22 knowledge, the training of an associate and make that call.
23 Q So they're looking at the associates who are on site and
24 saying, I'm going to assign this task to this associate?
25 A Correct.

1 Q How often do the shift leaders go through and perform this
2 post-peak checklist?
3 A Every day.
4 Q Every day? Okay. So there -- there's the exterior patio.
5 I won't go through each and every one of these. But I want to
6 make sure the record is very clear. Do the associates -- or
7 the shift leaders, do they go through every shift and identify
8 whether these tasks need to be done or not?
9 A Yes.
10 Q And if they in their independent judgment determine this
11 work needs to be done, who do they assign it to?
12 A An associate.
13 Q Okay. So we may have, the dining room is not clean. The
14 exterior is not clean. How would the shift leader -- how does
15 a shift leader, not hypothetically, actually, how does the
16 shift leader get that work assigned?
17 A They vocalize the needed work to be done to the associate,
18 and then fol -- assigns the work, and then follows up to make
19 sure it's complete.
20 Q Okay. Does the associate have direction of, they will
21 always assign it to this particular manner or method?
22 A No.
23 Q So how do they determine who -- which associates are going
24 to -- if there's multiple tasks to be done, how would an
25 assoc -- how does a shift later assign multiple tasks?

1 A It's to the shift leader's discretion. And they take into
2 account, again, the training, the skill set, and knowledge of
3 the associate.
4 Q Okay. Is there one associate that all of these are
5 assigned to, or does the shift leader at times assign these
6 post-peak checklist --
7 A Um-hum.
8 Q -- items to multiple associates?
9 A It can be multiple associates.
10 Q Okay. So we've got, you know, we've got to make sure that
11 the chip stock is set, the beverage cooler, all of these things
12 as we go through here, that the fountain station is set. What
13 are break down and consolidate stations? What does that mean?
14 A That is, say, after a peak time, we make sure that all the
15 food product is fresh. We change pans in the associate -- or
16 associate -- in the stations and make sure that the stations
17 are cleaned and ready to go for the next day part.
18 Q Okay. Empty trash bins and sweep the line. What's the
19 line?
20 A The service line, where we prepare the food items.
21 Q Okay. So these are, again, that's a task that the shift
22 lead will assign to a associate?
23 A Correct.
24 Q Wash and rinse, sani -- and sanitize dishes, clean,
25 organize, and reset. What's BOH for the record? What is that?

1 A Back of house.
2 Q And what's entitled in the back of the house?
3 A That is where our prep station is, where we prepare
4 different meats, cheeses, et cetera. We wash dishes. Our
5 manager desk is in the back of the house, as well as storage.
6 Q Okay. And it seems like there's a lot of tasks that maybe
7 need to be done all during this post-peak inspection. So
8 again, how would the shift leader determine how many associates
9 to engage in these tasks?
10 A The shift lead would determine what is needed to be done.
11 They would decide what associate is best equipped to their
12 discretion, and then assign different tasks in order to
13 complete all of the items on the list.
14 Q Okay. Handwashing sinks are accessible. It seems more of
15 just like an inspection item. Associates can't move sinks.
16 A No.
17 Q But what would making it accessible be? What would be the
18 potential problem there?
19 A Let's say, if there was cardboard or something in the way
20 of the sink that would prevent someone from handwashing, to
21 make sure that area is clear.
22 Q Okay. And prepped for the next shift. That seems pretty
23 general. What's entailed in doing the prep for the next shift?
24 A So during this post-peak checklist, the shift leader has a
25 prep sheet that they determine what they have on hand and what

1 is needed for later in the day. And then, they would determine
2 what is needed to prep up, so we have enough food for the rest
3 of the shift.
4 Q Okay. Continuing to go through here. And then, there's
5 the complete the shift evaluation midday huddle. What occurs
6 during a midday huddle?
7 A So a midday huddle is where a shift leader would collect
8 the associates that are working and maybe give a rundown -- not
9 maybe, they give a rundown of how this shift went for the day,
10 any big catering orders that we had, if there is an orientation
11 or training coming up during that mid-shift, and just an update
12 for what to expect for the night ahead. So just kind of a --
13 an update.
14 Q Okay. And then, the post-peak temp log, what's that?
15 A So we take temperature checks of our food product
16 throughout the day. So the shift lead would be accountable for
17 temping our food and entering it in to our log.
18 Q Okay. And then, even though it says here -- I want to
19 talk about this one a little bit, review applications in
20 talentRelief. What's talentRelief?
21 A talentReef is our recruiting website where applications
22 come in for an employment.
23 Q Okay. And it's not the Employer's position that shift
24 leaders are responsible for hiring, correct?
25 A Correct.

1 Q Okay. All right.
2 MR. ABRAHAM: With that, I'm going to, if I haven't
3 already, I'm going to move that Employer Exhibit 5 be added to
4 part of the record.
5 HEARING OFFICER WIANT: Do only shift leads fill this form
6 out?
7 THE WITNESS: No.
8 HEARING OFFICER WIANT: And so is that why there is a
9 review talentReef portion, because why -- why would that be
10 included, if shift leads were filling this out?
11 THE WITNESS: General managers can fill out this form.
12 And assistant managers can fill out this form. And those two
13 positions have access to talentReef.
14 HEARING OFFICER WIANT: And how often is the form filled
15 out by shift leads?
16 THE WITNESS: When they are the manager in charge of the
17 shift.
18 HEARING OFFICER WIANT: And what does it mean to be a
19 manager? I'm getting sidetracked. I need to enter this in.
20 But I do have more questions for you. Yeah.
21 Employer Exhibit 5 is entered into the record.
22 **(Employer Exhibit Number 5 Received into Evidence)**
23 HEARING OFFICER WIANT: And Mr. Abraham, prior to moving
24 off of the assignment of tasks, I would like to ask your
25 witness additional questions. And -- and so just let me know

1 when you are shifting gears.
2 MR. ABRAHAM: Oh. Yep. There's a lot more tasks that the
3 shift leaders --
4 HEARING OFFICER WIANT: Okay.
5 MR. ABRAHAM: -- assign that we'll go through. And -- and
6 we -- we can address that a little bit now.
7 Q BY MR. ABRAHAM: When we looked at the -- what was
8 admitted as an Employer, I think it's Exhibit, yeah, Exhibit 2.
9 It's the deployment map. When we talk about the MIC, is that
10 the title, I'll say, of the person that completes the post-peak
11 checklist?
12 A Correct.
13 Q Okay. And so that really -- who completes it? That
14 really gets into the question of, who is the MIC on a day-to-
15 day basis, correct?
16 A Correct.
17 Q And with the Portland store, are you aware of whether the
18 general manager would serve as the MIC, if there's a shift
19 leader on site?
20 A Although a general manager may be on site, the GM can
21 assign the manager in charge accountability to that person to
22 run the shift.
23 Q Okay. And are you aware, at the Yamhill store, that
24 general manager, as we'll get testimony later from that
25 individual, is Miriam Arteaga Ochoa; is that correct?

1 A That is correct.
2 Q And when -- she goes by Mimi?
3 A Mimi.
4 Q Okay. And when Mimi is on site, are you aware if she is
5 ever the MIC if a shift leader is present?
6 A Yes, I am aware.
7 Q And what is that? What is her role and vis-à-vis, the
8 MIC, if the shift leader is present?
9 A Mimi may remove herself from the manager-in-charge role to
10 take care of, say, general manager accountabilities, like
11 writing the schedule, placing food orders, answering emails,
12 any of the administrative tasks that could remove her from the
13 line.
14 Q Okay. So if I'm clear, and for the record, and we'll
15 have --
16 A Um-hum.
17 Q -- Mimi testify herself too, when Mimi's on site, and
18 there's a shift leader on site as well, Mimi will assign the
19 manager-in-charge duties to the shift leader, correct?
20 A Correct.
21 Q Okay. And you said setting the schedule.
22 A Um-hum.
23 Q When one sets the schedule for Potbelly, are they
24 assigning stations to associates?
25 A No.

1 Q Okay. All right. So let's talk more about assigning more
2 tasks. So so far, we've covered the ad-hoc tasks that come up
3 throughout the course of a shift in the form of cleaning and
4 line duties. We've covered the sort of every day schedule
5 tasks that a shift leader must assign in the form of a post-
6 peak checklist. Is there also a closing checklist that lists
7 assignment of -- or duties that will need to be checked to
8 determine if they need to be assigned by a shift leader?
9 A Yes.
10 Q Okay. So I'm going to turn to Exhibit, what's been marked
11 as Exhibit 6. It is a 26-page document. Okay. So going
12 through this document, is it similar to the post-peak
13 checklist?
14 A Yes.
15 Q And again, who completes this checklist?
16 A The manager in charge.
17 Q Okay. And when we looked at -- is there a particular time
18 of the day when this is done?
19 A It can be completed from 3 p.m. to close.
20 Q Okay. So again, we'll -- we'll clarify if and when the
21 general manager or assistant general manager serve as the MIC
22 throughout the course of the 6 -- or 7 a.m. when the shift --
23 the store is open until 8 p.m. when the store closes. But when
24 we're looking at Employer Exhibit 4, it shows that the
25 assistant general manager and the general manager really never

1 work until 8 p.m.; is that correct?
2 A Yes.
3 Q So 100 percent of the time, what classification of
4 employee completes the closing checklist?
5 A The shift leader.
6 Q Okay. And let's go through the tasks of the shift leader
7 here. So again, some of the same type of questions, generally,
8 that were asked. So at the end of the shift, again, the shift
9 leader has to go back through. How do they determine if the
10 tables are level and -- or if the chairs are neatly arranged?
11 A It's to their discretion.
12 Q If they determine that chairs aren't neatly arranged and
13 the tables are kind of all out of line, what do they do next?
14 A They assign the task to an associate.
15 Q Okay. Same thing with -- and again, this -- there's 26
16 pages of these tasks that need to be assigned. Is that the
17 same thing for every single one of these, where the actual
18 shift leader, not hypothetically, but they actually go through
19 every night and look at these tasks?
20 A Yes.
21 Q If they, in their independent judgment, make a decision
22 that this task needs to be done, who do they assign it to?
23 A An associate.
24 Q How do they make the decision of which associate to
25 assignment it to?

1 A Based on their knowledge, the associate skill set, their
2 capability level, the associate capability level, and then they
3 make the decision. The shift lead makes the decision to
4 assign.
5 Q And the associates that are on site, all of them can
6 perform these tasks, correct?
7 A Correct.
8 Q As we go through here, again, even the cooler, the
9 restroom. So the associate will have to clean the -- the --
10 potential clean the mirrors of the restroom when assigned by a
11 shift leader?
12 A Correct.
13 Q So all the way through here. The garbage is out. Okay.
14 All of these, again, are individual assignments that a shift
15 leader will make on a daily ba -- that a shift leader does make
16 a determination, does it need to be done? The shift leader
17 determines, yes, it does need to be done, they assign it to
18 associates, correct?
19 A Correct.
20 Q Are there any direction that associate -- or shift leaders
21 get with, you should assign it to the most junior shift
22 associate, in -- in when we're talking about cleaning up these
23 tasks?
24 A No. The assignment of tasks is completely up to the
25 discretion of the shift leader.

1 Q Again, going down. I'm only on page 9 of 26 of the tasks.
2 And so again, all of these, the menus restocked, all of those
3 things are tasks that a shift leader will determine they're
4 necessary to be done. And they assign it to shift associates,
5 correct?
6 A Correct.
7 Q So say, shakes, for example. Say, I was the associate. I
8 was not working in the station of shakes and soup. I was
9 working at the station of load. Does that mean that a shift
10 leader cannot assign me to the closing tasks associated with
11 shakes?
12 A No. The shift leader can make the decision to assign you
13 to do that task, because of the need of the task.
14 Q And that's actually what is done, not hypothetically,
15 correct?
16 A Correct.
17 Q So all these, walk-in -- the walk-in cooler, all of these
18 are, at the end of the night, the shift leader makes the
19 determination of does it need to be done and assigns it?
20 A Correct.
21 Q There's -- Potbelly doesn't have a different class of
22 employee that comes in as a night crew and gets the shop ready
23 for the next day. It's all of the employees who are on-site?
24 A Correct.
25 Q Again, BOH is back of the house?

1 A Correct.
2 Q And some of these tasks seem like they'll take an
3 associate a little bit longer than others. For example, ovens
4 turned off, that might be pretty easy. But some of the other
5 ones might take a little bit longer. At this point in time, in
6 the night of the shift, how is the shift leader assigning the
7 work to be done relative to getting everybody out the door?
8 A Well, the shift leader uses their knowledge about the
9 associate to determine who would be most efficient to complete,
10 say, a longer or a difficult task.
11 Q Even down to -- these checklists require a shift leader to
12 even look at, do I need to assign somebody to cleaning out
13 the -- the cutting boards and make sure they're sanitized,
14 correct?
15 A Correct.
16 Q And every day the shift leader goes through this list?
17 A Correct.
18 Q So we're getting down to, you know, page 23 of 26,
19 assigned tasks. We'll talk more about this, but is -- what's
20 the shift leader's responsibility with ensuring that the time
21 an associate works is accurately captured?
22 A Their responsibility is at the end of the night to review
23 clock-out or punches of the employee to ensure all employees
24 are clocked out for the day so labor is in check.
25 Q Do shift leaders have the authority to alter an

1 associate's time card?
2 A Yes.
3 Q Do they have to check in with anybody when they do that?
4 A No.
5 Q Okay, we'll talk more about that as we go through here.
6 MR. ABRAHAM: So at this time, I asked that Employer
7 Exhibit 6 be added to the record.
8 HEARING OFFICER WIANT: Employer Exhibit 6 is admitted
9 into the record.
10 **(Employer Exhibit Number 6 Received into Evidence)**
11 MR. ABRAHAM: Distributing that to the parties. Okay.
12 And we'll have some testimony, with respect to when the shift
13 leader is performing MIC duties, which include the checklist.
14 Q BY MR. ABRAHAM: Is there a third checklist?
15 A Yes.
16 Q And what checklist is that?
17 A The clo -- opening checklist.
18 Q Opening checklist?
19 A Okay.
20 Q Okay.
21 A Yes.
22 Q So let's -- I'm going to share my screen with what's
23 marked as Employer Exhibit 7. All right. So this, again,
24 purports to be the opening checklist?
25 A Correct.

1 Q We'll go in here and we'll talk -- go through the things
2 that need to be completed and then the tasks to evaluate the
3 close. And what is evaluating the close?
4 A So that is where the opening manager in charge will
5 evaluate the status of completed tasks from the night prior.
6 Q Okay, all right. And then let's go down to where we start
7 looking at some of these other tasks here. Well, actually,
8 scroll up here. I think I -- so there's evaluate the close.
9 And then these other ones as we're going through here, these
10 are things where if, again, as the employees come to work about
11 an hour before the store opens, as the manager in charge is
12 seeing that if the -- the cooler is not fully stocked, what
13 happens then?
14 A The manager in charge would assign that accountability to
15 an associate to complete.
16 Q Okay. And then now, we get down to opening desks.
17 A Um-hum.
18 Q So this isn't just reviewing the prior crew's work, and --
19 and did the shift leader who worked the prior crew, did they
20 direct and resp -- were they responsible for their crew the
21 work that they did. Now, we're moving on this opening
22 inspection to -- or checklist to tasks that the MIC has to do
23 for the morning, correct?
24 A Correct.
25 Q All right. So the first five pages, that's tasks that we

1 would look at to see the shift leader from the night before --
2 did their crew that they're responsible for complete the tasks
3 that they were supposed to do?
4 A Correct.
5 Q All right. Let's focus now -- pivot now to the opening
6 tasks that the MIC would do each morning. So we've got review
7 punches and payroll. Is that related to, like we talked about,
8 at the end of the last crew adjusting time cards or time clocks
9 as necessary?
10 A Yes, that's where the opening MIC would just make sure
11 that everyone punched out from the night prior so labor is in
12 check.
13 Q Okay. Perform the audits, check to see that -- check in
14 and place product orders, make sure everything's there.
15 A Correct.
16 Q Then, we get into the setup stations. Again, what's
17 happening here when we look at are the setup stations and
18 com -- complete line prep tasks --
19 A Um-hum.
20 Q What does a shift leader do if they're serving as MIC on
21 an opening checklist for these sort of tasks?
22 A So the shift leader would give direction to the associates
23 that are working and assign them specific tasks for specific
24 stations to complete.
25 Q Again, they'll look at the exterior patio, just like

1 before.
2 A Um-hum.
3 Q The shift leader might say overnight, especially at a
4 store like Yamhill, in that location, something happened to the
5 exterior. The patio's not clean, even though it may have been
6 cleaned the night before. What happens in that situation?
7 A The shift leader would do a manager walk in the morning
8 just to make sure that the patio is clean and ready to go. If
9 it is not, they would assign that task to an associate to
10 complete before opening.
11 Q Okay. And just so I'm clear, we're not talking
12 hypotheticals. This is what actually happens on a daily basis
13 at the Yamhill store?
14 A Yes, on a daily basis.
15 Q And how often is the -- given the location of the store,
16 is it a regular occurrence that the exterior of that area
17 outside of the store needs to be cleaned?
18 A Yes.
19 Q All of these, regular occurrences that actually are done
20 every day?
21 A Yes.
22 Q And getting through here near the end. Every day, the
23 shift leader will make a determination -- or the MIC, if --
24 assuming it's a shift leader. Again, we'll talk about that --
25 close that loop and a little bit here when we get the

1 manager -- general manager, assistant general manager's
2 testimony. The shift leaders will check the shakes and soup
3 station that it's stocked and clean, and assign it to an
4 associate when it's not clean?
5 A That is correct.
6 Q Okay.
7 MR. ABRAHAM: All right. I would ask that Employer
8 Exhibit 7 be admitted into the record.
9 HEARING OFFICER WIANT: Employer Exhibit 7 is admitted
10 into the record.
11 **(Employer Exhibit Number 7 Received into Evidence)**
12 MR. ABRAHAM: Send that to the parties. Okay.
13 Q BY MR. ABRAHAM: All right. I want to continue on with
14 assignment of tasks from shift leaders to associates. And I
15 want to talk more specifically about station assignments.
16 A Okay.
17 Q When an associate -- well, let -- let me back up. You
18 talked about the schedules. What information is listed on a
19 schedule?
20 A The information listed on a schedule is the day of shift
21 assigned and for the duration of the shift for the employee.
22 Q Okay. So if I'm an employee, I'm an associate, and I know
23 that I'm to come in at -- well, let me -- 3:00 --
24 A Um-hum.
25 Q -- on Thursday, February 22nd, before I get to work, do I

1 know what station I'm going to be assigned?
2 A No.
3 Q How does an associate find out what station they will be
4 assigned when they arrive at work at the designated time that
5 they're supposed to report to work?
6 A The manager in charge or shift lead decides what stations
7 are going to be assigned to what employees on the shift.
8 Q And again, is that decision made daily by shift leaders?
9 A Correct.
10 Q And for every single employee who reports to work?
11 A Correct.
12 Q Okay. And each station -- we've talked through it at the
13 beginning of your testimony, about the different duties that
14 each station has. Are -- is there a particular formula that a
15 shift leader must use to assign associates to certain stations?
16 A No.
17 Q How does a shift leader make that decision of which
18 associate to assign to which station?
19 A It's to the shift leader's discretion. What they've
20 experienced with the associates. They rely on their own
21 knowledge to make that choice of where the associate should
22 work.
23 Q Do they have any formal direction from the corporate
24 office?
25 A No.

1 Q Does the shift leader follow seniority?
2 A No.
3 Q Does anyone approve a shift leader's assignments of
4 associates to their particular stations?
5 A No.
6 Q Does the shift leader have to ask assistant general
7 manager, hey, I want to assign this associate to station 1
8 today?
9 A No.
10 Q Once a shift leader makes an assignment to a station, does
11 this shift -- are there circumstances in which the shift leader
12 might reassign associates to a different station?
13 A Yes.
14 Q And -- and when does that actually occur? Under what
15 circumstances does that occur?
16 A So if a shift leader determines -- say we have a lunch
17 rush, or if we're particularly slow, or if there is a need
18 somewhere in the restaurant, the shift leader has the
19 discretion to choose and alter where people are assigned
20 throughout the shift.
21 Q And how often does that actually occur?
22 A Every day.
23 Q I'm going to talk about associates and their breaks that
24 they receive throughout the course of the associates' work day.
25 A Okay.

1 Q Who assigns or approves when associates take breaks?
2 A The manager in charge.
3 Q And how -- and again, we've talked about the managers in
4 charge when they're shift leads. And we'll get, again,
5 testimony from the general manager. But your testimony has
6 already been that when Mimi is there, she is not the manager in
7 charge if a shift leader is also present, correct?
8 A If Mimi determines that the shift leader is the manager in
9 charge, that is when the switch happens. A conversation
10 occurs.
11 Q Okay. And the same thing could be true for the assistant
12 manager in --
13 A Um-hum.
14 Q -- charge, correct?
15 A Correct.
16 Q Okay. So how does -- if the shift leader's serving the
17 role -- or the title, I'll say, of manager in charge --
18 A Um-hum.
19 Q -- how do they determine when associates can take their
20 breaks?
21 A It's up to the decision or discretion of the shift leader
22 what a good time would be for the associate to take a break,
23 based on what's going on in the shop.
24 Q Okay. You testified a little bit about the different
25 shifts throughout the day --

1 A Um-hum.
2 Q -- that associates will work, or employees work. 3 p.m.
3 seems to be a shift -- a time when some associates report to
4 work; is that correct?
5 A Yes.
6 Q What would happen if there's a -- no general manager
7 onsite, no assistant general manager on site, and it's 3 p.m.,
8 and an associate doesn't report. Who is the senior person on
9 site to be able to address that issue?
10 A The shift leader.
11 Q And -- and that's -- does that ever happen?
12 A Yes.
13 Q And has that happened with regularity?
14 A Yes.
15 Q How -- how regular?
16 A Could be daily.
17 Q When that happens, what does a shift leader actually do?
18 Not hypothetically --
19 A Um-hum.
20 Q -- what do they do; what do they actually do?
21 A The shift leader would try -- the shift leader would
22 source other coverage, where they would make phone calls to --
23 to other -- to other employees to see if they could come in and
24 cover the shift.
25 Q Does the shift leader always have to cover the shift?

1 A No.
2 Q Let's talk about adjusting time cards. Do associates
3 now -- do they punch in? Do they have some type of system
4 where they punch in to record the time that they arrived at
5 work?
6 A Yes.
7 Q Do they -- are they also supposed to punch out?
8 A Yes.
9 Q Do shift leaders ever adjust these punches?
10 A Yes.
11 Q I'm going to share what's marked as Employer Exhibit 8.
12 It is a 16-page document, and it's titled -- purports to be
13 audit exceptions by manager, detailed by store. Do you see
14 that?
15 A Yes.
16 Q Do you recognize this document?
17 A Yes.
18 Q Can you explain what this is?
19 A So this document entails managers, say shift leaders or
20 managers on duty. It could entail a general manager, an
21 assistant manager, and then their actions, say a data trail, of
22 managing clock in and clock out times and making those
23 adjustments for record.
24 Q Okay. So I'm going to go ahead and look here. So first,
25 the -- these would be entries done by Miriam, the general

1 manager, correct?
2 A Correct.
3 Q Okay, I'm going to scroll down to page 5, where we have
4 kind of this end of Miriam's and the beginning of another
5 individual. Do you recognize this name? Naaman Yarbrough?
6 A Yes.
7 Q And -- and who is Naaman Yarbrough?
8 A He is a shift lead at Yamhill.
9 Q Okay. And does this document show the -- the actions by
10 Naaman Yarbrough, with respect to time cards?
11 A Yes.
12 Q And what is this entry here on December 21st, 2022? So
13 with respect to Kellie Skyles' time card?
14 A This is where Naaman adjusted the associate's time
15 punches.
16 Q Okay. And it shows here the original clock in time was at
17 21:17, or 9:17 at night?
18 A Correct.
19 Q And then it was edited, it says here. Edited clock in
20 time to 1300, or 1:00.
21 A Correct.
22 Q What -- what does that show happened?
23 A It shows that the associate most likely forgot to punch
24 in, and then Naaman went back to adjust an accurate start time.
25 Q Okay. This clock out time is at 9:18?

1 A Correct.
2 Q And so the clock in time -- original clock in time was one
3 minute before the person clocked out?
4 A Correct.
5 Q And when Naaman adjusted Kellie's time clock, did he have
6 to get approval from anyone?
7 A No.
8 Q And Naaman's a shift leader?
9 A Correct.
10 Q Did Naaman have to -- well, I -- I guess you just said he
11 didn't have to get approval from anyone.
12 A He did not.
13 Q Okay. And it looks like down here, in addition to his own
14 time clocks that he changes, Kellie -- it's got Kellie again.
15 Down here, there's Sam Lawson. Who's Sam Lawson?
16 A He is a shift leader at Yamhill.
17 Q Okay. So again, this shows on December 2nd, 2022, that
18 Sam adjusted the time clock -- time -- time cards of Destiny
19 Roberts and Paulina Lara, correct?
20 A Correct.
21 Q And the shift leaders don't have to get approval from
22 anyone before they can adjust time clocks?
23 A They do not.
24 Q Or time cards? And associates are paid hourly, correct?
25 A Correct.

1 Q So this is actually impacting the associate's pay?
2 A Correct.
3 Q And we struggle through here, again, there's other
4 examples where we have a shift leader doing -- adjusting time
5 cards. And then there's Saphira Allen. And who is Saphira
6 Allen?
7 A Saphira is a shift lead at Yamhill.
8 Q Okay. And she's correcting these time cards. Is anybody
9 telling these shift leaders they must correct these time cards?
10 A No.
11 Q This is part of their responsibilities?
12 A Correct.
13 Q Can associates adjust their own time cards?
14 A No.
15 Q Okay. So going through here again, Saphira Allen looks
16 like she's got quite a -- a few of them that she's been
17 adjusting. And then, we go down here, and we get to Starr
18 McKinnis. And who is Starr McKinnis?
19 A Starr is the assistant manager --
20 Q Okay.
21 A -- of Yamhill.
22 Q So it's the general manager, assistant general manager,
23 and shift leads that have the ability to correct time cards?
24 A Correct.
25 MR. ABRAHAM: Okay, I move for Employer Exhibit 8 to be

1 added to the record.

2 HEARING OFFICER WIANT: Employer Exhibit 8 is entered into

3 the record.

4 **(Employer Exhibit Number 8 Received into Evidence)**

5 HEARING OFFICER WIANT: Is there any sort of policy or

6 procedure regarding the abil -- or like, the -- the parameters

7 of adjusting time cards?

8 THE WITNESS: There is, in -- in our training documents,

9 where we train a shift lead how to adjust time clock in and

10 clock outs. And at Potbelly, we empower our managers to make

11 those decisions.

12 HEARING OFFICER WIANT: And do shift leads make these

13 adjustments when they're only acting as a shift lead? Or are

14 they only allowed to make these adjustments if they're the

15 manager in charge for that day?

16 THE WITNESS: They can make the adjustments when they're

17 not manager in charge, as well.

18 HEARING OFFICER WIANT: Thank you.

19 MR. ABRAHAM: All right, I want to -- and Madam Hearing

20 Officer, I'm going to move away from the assignment for the

21 time being with this witness. We've got two other ones that

22 we'll talk about the distinction of MIC, and when that's filled

23 by a shift leader, and when it might be filled, if any, by

24 somebody else. But I wanted to alert you that I'm --

25 HEARING OFFICER WIANT: I do have a couple --

1 MR. ABRAHAM: -- moving in a different direction.
2 HEARING OFFICER WIANT: -- of questions, so I would like
3 to go off --
4 MR. ABRAHAM: Okay.
5 HEARING OFFICER WIANT: -- the record for five minutes.
6 MR. ABRAHAM: Sure, sounds great. We will be back in
7 about five minutes.
8 (Off the record at 11:42 a.m.)
9 HEARING OFFICER WIANT: We're back on the record after a
10 short break, and I have a couple of questions for Ms.
11 Shaughnessy, correct?
12 THE WITNESS: Correct.
13 HEARING OFFICER WIANT: All right. I just want to clarify
14 if there's any tracking of who is assigned to be the manager in
15 charge on any given shift during any given day?
16 THE WITNESS: Yes, and that would be tracked on that
17 deployment map.
18 HEARING OFFICER WIANT: And are those deployment maps
19 retained?
20 THE WITNESS: No, they are dry erase.
21 HEARING OFFICER WIANT: Okay. And then what -- I guess,
22 if it's dry erase and they're not retained, is there any sort
23 of percentage that could be provided of times that are -- that
24 shift leads are, in fact, the manager in charge?
25 THE WITNESS: Yes, actually, that -- that is true.

1 Especially, you could determine that to see -- say, when Mimi,
2 the general manager, or Starr, the assistant manager, are not
3 in the building. So process of elimination, that would be the
4 shift leader being in charge.
5 HEARING OFFICER WIANT: So in the afternoons, given that
6 the two -- the manager and the assistant general manager are
7 not working, generally, past 2 or 3, afternoon shifts, the
8 manager in charge are shift leads?
9 THE WITNESS: Correct.
10 MR. ABRAHAM: And if I can follow up with that, because
11 that's kind of piggybacking on what we already talked about.
12 That does not mean that just because a general manager or
13 assistant general manager is presence, that the shift lead is
14 not the MIC, too, right?
15 THE WITNESS: Correct.
16 MR. ABRAHAM: Yeah. It's -- it's a guarantee that the
17 shift lead is the MIC if the assistant general manager or the
18 general manager is outside. And we'll have testimony on when a
19 general manager, assistant general manager is present.
20 THE WITNESS: Correct.
21 HEARING OFFICER WIANT: Now, Ms. Shaughnessy, are there
22 any parameters that shift leads have to assign duties? Ones
23 that perhaps are not on that checklist?
24 THE WITNESS: They have no parameters in decision making
25 to assign who does what for the accountabilities. It's to

1 their discretion.

2 HEARING OFFICER WIANT: And do shift leads assign duties

3 when they are not the manager in charge?

4 THE WITNESS: Not typically.

5 HEARING OFFICER WIANT: Do shift leads provide feedback to

6 the associates regarding the duties that they have assigned?

7 THE WITNESS: Yes.

8 HEARING OFFICER WIANT: On whether or not it's been

9 completed to a good enough threshold?

10 THE WITNESS: Yes, the shift leader follows up with the

11 associate to determine if the work was done satisfactory or

12 not, and then they give further feedback to the associate.

13 HEARING OFFICER WIANT: And this might be a better

14 question for the general manager or the assistant general

15 manager who actively do manager-in-charge duties there. But

16 how often are these tasks actually being assigned, rather than

17 the employees taking it upon themselves to do the tasks that

18 are within their job description?

19 THE WITNESS: I would refer to Mimi or Starr.

20 HEARING OFFICER WIANT: Perfect. Can a shift lead who's

21 acting as a manager in charge assign all of the tasks to one

22 associate?

23 THE WITNESS: They could choose to do that, but it would

24 not be a good idea.

25 HEARING OFFICER WIANT: But they have -- their -- it's

1 within their discretion?
2 THE WITNESS: They have their sole discretion to do that,
3 yes.
4 HEARING OFFICER WIANT: Who is -- I guess, are there
5 circumstances where shift leads are not working? There's no
6 chef on duty?
7 THE WITNESS: Yes.
8 HEARING OFFICER WIANT: And then who would the manager
9 be -- in charge be?
10 THE WITNESS: General manager or assistant manager.
11 HEARING OFFICER WIANT: Does the shift -- go ahead?
12 THE WITNESS: I was going to say it depends on the daypart
13 assigned for the shift, yeah.
14 HEARING OFFICER WIANT: Do the shift leads have a list of
15 who has been trained -- trained on what station?
16 THE WITNESS: Yes.
17 HEARING OFFICER WIANT: And who creates that list?
18 THE WITNESS: Shop management team.
19 HEARING OFFICER WIANT: And does the shop management team
20 include the shift leads?
21 THE WITNESS: Yes.
22 HEARING OFFICER WIANT: So the shift leads are, in part,
23 creating the list of who has and who has not been trained on
24 any given station?
25 THE WITNESS: They have a part in the training of

1 completion of the associate, so that's the part that they play.
2 HEARING OFFICER WIANT: And so the shifts leads would be
3 aware not only because of that list, but because they have
4 helped train the associates of what they -- what stations they
5 can and cannot work at?
6 THE WITNESS: Correct.
7 HEARING OFFICER WIANT: Can a shift lead assign an
8 associate to a station that they have not been trained at?
9 THE WITNESS: They can.
10 HEARING OFFICER WIANT: Perfect. The other questions are
11 more appropriate for the other folks.
12 All right, Mr. Abraham. You can continue with your
13 questioning. Thank you so much.
14 MR. ABRAHAM: Okay, sure.
15 **RESUMED DIRECT EXAMINATION**
16 Q BY MR. ABRAHAM: I want to move into the topic of
17 rewarding associates and the shift lead's ability to -- and --
18 and what they actually do, with respect to rewarding
19 associates. How are associates -- generally, like, within the
20 Potbelly structure at the Yamhill store, how can associates be
21 rewarded? What are some of the rewards that associates may
22 receive?
23 A Sure. A common reward would be for a great performance or
24 something special going on at the shop. A meal. We call it a
25 manager meal, so they get their meal to their choice for free.

1 Associates may be given a gift card for their performance, and
2 also verbal recognition. Or we have something called a
3 sideways salute, where a manager or a coworker can write a nice
4 message highlighting their performance, as well.
5 Q Okay, and are -- what you just mentioned, the manager
6 meal --
7 A Um-hum.
8 Q -- and then you said gift card?
9 A Um-hum.
10 Q That's a gift card to where?
11 A It could be to the shift lead's discretion, to where they
12 wanted to choose. Most commonly, it would be to, say,
13 Starbucks or Amazon or iTunes. Something like that.
14 Q Okay. And how does the shift lead -- if -- well, how --
15 how does a -- if a shift's going to give somebody a gift card
16 to, say, iTunes --
17 A Um-hum.
18 Q How does the shift lead acquire that gift card?
19 A So there are two options that a shift we can do. They can
20 take money out of the cash register and go and purchase the
21 gift card at a local store, bring the receipt back, and do a --
22 a paid out. That's what we call, for record of a transaction.
23 Q Okay. And now, moving from the structure of here's how it
24 works to --
25 A Um-hum.

1 Q -- it actually does work this way at the Yamhill store.
2 A Um-hum.
3 Q Is that actually the process that is followed and has been
4 followed at the Yamhill store for shift leads to reward
5 associates?
6 A Yes, both in free meals to their discretion, and then gift
7 cards.
8 Q And gift cards to external --
9 A External.
10 Q -- stores? Stores?
11 A Correct.
12 Q Is there any limits on what stores that an associate could
13 get a gift card from a shift leader for a re -- a reward?
14 A Not to a particular store, but a monetary value, 25 or
15 less is to the discretion.
16 Q Okay. And that's on individual currencies, correct?
17 A Um-hum.
18 Q Is there any limit of how many individual occurrences an
19 associate may be recognized throughout the course of a week?
20 A No, no limit.
21 Q So if you have a -- an employee -- an associate that comes
22 in and has great performance, like, and meets that standard
23 every day that they work in a week, they could get a gift card
24 every day that week?
25 A They could, yes.

1 Q Okay. Let's talk about that standard, great performance,
2 that you said.
3 A Um-hum.
4 Q How is that determined if an associate hits a great
5 performance that triggers a reward?
6 A So again, it's up to the shift leader or the manager in
7 charge to determine what dictates great performance for that
8 day. And -- and it's based on just past experiences and the
9 shift leader's overall feeling about what occurred.
10 Q Okay. I want to change topics. And kind of the last area
11 that I want to cover, it's, for the readers of the record, what
12 we'll recognize as secondary indicia of supervisory status. Do
13 the shift leads get any benefits that an associate does not
14 get?
15 A Yes.
16 Q And what are some of those benefits?
17 A A sooner eligibility for benefits at Potbelly.
18 Q When you say benefits in that context, are -- what
19 benefits do you mean?
20 A Medical, dental, vision?
21 Q Okay. So when an associate starts at Potbelly's, are they
22 eligible for medical, dental, vision insurance?
23 A Not right away.
24 Q And when a shift lead starts, when are they eligible for
25 benefits.

1 A After 30 days of employment.
2 Q Okay. And let's go back to that shift lead, so the
3 record's clear. So the hearing officer doesn't ask this
4 question, I'll ask it for her. How long must an associate work
5 before they get that same level of benefits?
6 A They have to be considered a full-time employee, which is
7 30 hours a week plus, as does a shift lead. They have to be 30
8 hours a week average or plus during that 30-day trial period.
9 But a 30-day average for associate for a year.
10 Q For an entire year?
11 A Yes, correct.
12 Q Okay. Do they earn the same rate of pay?
13 A Associate versus shift lead?
14 Q Correct.
15 A No.
16 Q And who are -- goes without saying, but do you know how
17 much a shift lead earns in the Yamhill store?
18 A It can vary between rates, but I would say Mimi would
19 probably --
20 Q Okay.
21 A -- be better to answer that.
22 Q Okay. Well, let me look through my notes here, because I
23 think we'll covered responsibly direct with Mimi and Starr.
24 But just touching on that, when a shift lead -- for example, if
25 they've got the closing tasks, if their crew doesn't perform

1 all of the tasks that they're supposed to have done --
2 A Um-hum.
3 Q -- what happens to the shift lead?
4 A They are responsible for ensuring that all tasks are
5 completed from the night before, because the associates are in
6 their charge, and it is the shift leader's shift. They own the
7 shift, being assigned the manager in charge position.
8 Q Okay. So would -- would that come back negatively on the
9 shift leader if the associates don't perform all of the tasks
10 that they've been assigned?
11 A Yes.
12 Q And in what way would that come back on the shift leader?
13 A It would be a discussion of follow up for the shift
14 leader. Coaching would be had between the general manager and
15 them. And then, if it continued to happen, maybe some prog ---
16 progressive corrective action after an amount of time.
17 Q Okay, all right. Well, those are all the questions that I
18 have for you, and we have to see if the hearing officer has any
19 additional questions for you.
20 HEARING OFFICER WIANT: You said that if there were -- if
21 there were issues with shift lead's associates, what -- what
22 they performed the night before, there might be some
23 progressive discipline that occurred, if it continued to
24 happen. Has that happened?
25 THE WITNESS: Yes.

1 HEARING OFFICER WIANT: Okay. At this store?
2 THE WITNESS: Yes.
3 HEARING OFFICER WIANT: Okay. Regarding the policy -- or
4 I guess regarding the giving of rewards, those gift cards that
5 we spoke about, is there a policy that allows for the shift
6 leads to provide those gift card rewards?
7 THE WITNESS: Yes. We, again, empower our managers to
8 their discretion to reward great behavior. Even on our profit
9 and loss statements, we have a line item for just employee
10 recognition and celebration. So there is a fund there that all
11 of our managers can dip into to utilize for such rewards.
12 HEARING OFFICER WIANT: And shift leads, are they able to
13 provide -- or give a reward to an associate when they are not
14 the manager in charge?
15 THE WITNESS: Yes, they're able to do that.
16 HEARING OFFICER WIANT: And have they?
17 THE WITNESS: I cannot confirm. That would be a question
18 for Mimi or Starr.
19 HEARING OFFICER WIANT: Of course. Do they need approval
20 to give such a reward?
21 THE WITNESS: No.
22 HEARING OFFICER WIANT: And they -- they report it,
23 though, after --
24 THE WITNESS: Correct.
25 HEARING OFFICER WIANT: -- providing it?

1 THE WITNESS: Correct.

2 HEARING OFFICER WIANT: And I'm guessing this is a

3 question for Mimi, but examples of times that rewards have been

4 provided?

5 THE WITNESS: Yes, I would ask Mimi.

6 HEARING OFFICER WIANT: Okay. I think those are all of my

7 questions.

8 Mr. Abraham, do you have any follow-up questions?

9 MR. ABRAHAM: I do not.

10 HEARING OFFICER WIANT: All right, then we can go ahead

11 and dismiss your witness.

12 MR. ABRAHAM: Okay. Well, go ahead then. Do you mind if

13 we take -- I know we just came back, but could we just take

14 maybe a -- a recess in place for five minutes --

15 HEARING OFFICER WIANT: We'll --

16 MR. ABRAHAM: -- and come back at 12:10?

17 HEARING OFFICER WIANT: We'll go off the record for five

18 minutes.

19 MR. ABRAHAM: Okay.

20 (Off the record at 12:05 p.m.)

21 HEARING OFFICER WIANT: We're back on the record after a

22 brief break.

23 Mr. Abraham, your next witness.

24 MR. ABRAHAM: The Employer calls Starr McKinnis, please.

25 HEARING OFFICER WIANT: Hi, Starr McKinnis. My name is

1 Emily Wiant, and I'm the hearing officer today. Will you
2 please go ahead and raise your right hand?
3 Whereupon,
4 **STARR MCKINNIS**
5 having been duly sworn, was called as a witness herein and was
6 examined and testified, telephonically as follows:
7 HEARING OFFICER WIANT: Wonderful. And now, as a
8 reminder, we are in a virtual hearing room. So please take a
9 moment after any question is being asked so we're not talking
10 over each other. Please try not to talk over myself or Mr.
11 Abraham.
12 Do you understand?
13 THE WITNESS: Yes.
14 HEARING OFFICER WIANT: Wonderful. Mr. Abraham, your
15 witness.
16 **DIRECT EXAMINATION**
17 Q BY MR. ABRAHAM: Okay, and Ms. McKinnis, can you please
18 spell your name for the record?
19 A Yeah. Starr, S-T-A-R-R, McKinnis, M-C-K-I-N-N-I-S.
20 Q Okay. And Ms. McKinnis, where do you work?
21 A I work for Potbelly Sandwich Works.
22 Q Okay, and which store do you work at?
23 A The 6th and Yamhill store.
24 Q Are you -- is that the only store you work at?
25 A No. I -- I was going to say, I've worked at the Hillsboro

1 store, too.
2 Q Right. Right now, though, is that this -- the only store
3 you work at?
4 A Yes.
5 Q Okay. All right, what is your current title?
6 A I'm the assistant general manager.
7 Q Okay. Prior to being the assistant general manager, what
8 classification did you hold for Potbelly?
9 A I was a shift lead.
10 Q And when did you transition from being a shift lead to an
11 assistant general manager?
12 A It was the end of August of 2022.
13 Q And have you also been an associate for Potbelly?
14 A Yes.
15 Q When -- let -- let me ask this. When you -- in August of
16 2022, when you were a shift lead, did you review the job
17 description for a shift leader?
18 A Yes.
19 Q Did that accurately capture the duties that you did as a
20 shift leader?
21 A Yes.
22 Q Okay, and I'm going to just share so you can kind of
23 recognize this, what's been admitted as Employer Exhibit 3. Do
24 you recognize that document that I'm sharing with my screen
25 here?

1 A Yes.
2 Q And what is this?
3 A It is the job description of the shift lead position.
4 Q And again, this is a role that you've actually performed
5 up until August of 2022. So less than, like -- last -- six
6 months ago?
7 A Yeah.
8 Q Okay. All right. Have the duties of the shift leader
9 changed since then?
10 A No.
11 Q Are the shift leaders supervisors?
12 A Yes.
13 Q What classification of employees do shift leaders
14 supervise?
15 A They supervise the certified trainers and associates.
16 Q Okay. How many associates and certified trainers would a
17 shift leader supervise during any given shift?
18 A It can be from two to usually six, depending on what time
19 of year.
20 Q And that's at the Portland store, correct?
21 A Yes.
22 Q Is that a hypothetical, or is that a fact?
23 A It's fact.
24 Q Let's talk about the role of what we refer to as MIC, or
25 manager in charge, okay?

1 A Um-hum.
2 Q Who serves as the manager in charge?
3 A It's the highest ranking, usually, in the shop, depending
4 on the time.
5 Q Okay. So let's talk about that. Say you are in the shop,
6 and the general manager is not in the shop. Does that mean as
7 a rule, you are the manager in charge?
8 A No.
9 Q How often do you serve as the manager in charge throughout
10 the course of a week?
11 A I would say on average, maybe one day a week.
12 Q One day out of seven?
13 A Yes.
14 Q The other six days out of seven, who fills the role of a
15 manager in charge?
16 A It'll either be the shift lead or the general manager.
17 Q Okay. And when hours that you are not in the store and
18 the general manager is not in the store, who, 100 percent of
19 the time, is an MIC?
20 A It'll be the shift leads.
21 Q Okay. All right, and we'll have the general manager
22 testify about the period of time that she serves as the MIC.
23 But to be clear for the record, you serve as the MIC only one
24 out of seven days of the week?
25 A Usually, yes.

1 Q And that's during the period of the time that you're
2 actually there?
3 A Yeah.
4 Q And you say usually. Is that -- are you confident in your
5 testimony that that's the fact of when you serve?
6 A Yes.
7 Q Okay. All right. Now that we've got the other six days
8 out of the week and every -- all seven evenings of the week
9 where it's the shift leader that's in charge -- or again, we'll
10 talk with Mimi about that -- I want to talk to you about some
11 of the assignment of work that shift leaders engage in, and you
12 actually engaged in as a shift leader yourself.
13 Is the shift leader the -- the manager for the shift? Do
14 they make the assignments of work?
15 A Yes.
16 Q Do the shift leaders, then, do they assign associates to
17 stations?
18 A Yes.
19 Q And how often is that done?
20 A All the time.
21 Q When you say all the time, multiple times throughout the
22 day?
23 A Yes.
24 Q Every day?
25 A Yes.

1 Q Do -- when a shift leader makes the assignments of a
2 station for an associate to work, how does a shift leader make
3 that determination?
4 A It is to their own discretion, but it'll usually be based
5 on, like, who has the most experience with what.
6 Q And when you served as a shift leader yourself, how did
7 you make the decision to assign associates to stations?
8 A It would definitely be based off of, like, who was good at
9 what. Like, we always had our morning crew laid out the same
10 way most of the time. But whenever we were switching in new
11 people, we'd always change it up.
12 Q And why would you change it up when you have new people
13 coming in?
14 A Just so they can get the experience that we had on said
15 shifts.
16 Q So if I'm understanding your testimony, one of the things
17 as a shift leader that you take into account is you rotate for
18 experience for associates?
19 A Yes.
20 Q How does a shift leader know what associate is new?
21 A I mean, based off of whether they're still in training,
22 usually. And then, I mean, it's really -- you kind of know
23 who's new.
24 Q Okay. Do -- based on your experience around the shop,
25 it's a new face around the shop, hey, you must be new here?

1 A Yeah.
2 Q When you said that you assign folks that -- doing what
3 they're good at, do you, as the assistant general manager, or
4 does Mimi, as a general manager, create a matrix, and says
5 here's the associates and here's what they're good at next?
6 A No.
7 Q How would a shift leader come to understand which
8 associates are good at which tasks?
9 A Observing and working with them.
10 Q And when they're assigning tasks to associates, it's based
11 on what?
12 A It's just based off of -- well, what they've seen, and
13 then how comfortable the associates are. Like, they can
14 communicate, like, okay, so would you like to do this today?
15 Or -- yeah.
16 Q Well, that brings up a -- a good point that I want to talk
17 to you about. How often do shift leaders assign work to
18 associates when there's work to be done?
19 A Any time. It's -- it's a constantly revolving thing.
20 Q And will shift leaders take into account the preference of
21 the associate?
22 A Yes.
23 Q Does the shift leader always follow the associate's
24 preference?
25 A No.

1 Q When a shift leader comes in and is assigning associates
2 to certain stations, do they have to get your approval, as the
3 assistant general manager?
4 A No.
5 Q Do they have to get anyone's approval?
6 A No.
7 Q And you mentioned that at the beginning shift, that
8 sometimes, you'll find somebody that's, you know, good and put
9 them in -- in the same kind of shift. But do shift leaders
10 assign the same associates to the same stations as their
11 routine regular occurrence?
12 A Yes.
13 Q Are there times when they switch?
14 A Yes.
15 Q And again, are there -- let me ask you it this way. Are
16 there some associ -- or some shift leaders that think one
17 associate is good at load, and a different shift leader might
18 think that associate is better dressing?
19 A Yes.
20 Q So while I, as a shift leader, might say, hey, I'm always
21 going to assign Starr as load, because I think that's what
22 she's better at, there might be a different shift leader that
23 says, you know what? Actually, I think Kyle's wrong. I think
24 Starr is a better dressing, so I will assign Starr as a -- to
25 the dressing station.

1 A Yeah.
2 Q And that happens?
3 A Yeah.
4 Q Regularly?
5 MR. ABRAHAM: And for the record, the witness nodded in
6 the affirmative.
7 Q BY MR. ABRAHAM: During the course of a shift -- and we
8 talked about what the stations are and -- and there's multiple
9 stations that -- that are staffed. When you were a shift
10 leader, did you ever reassign associates to different stations?
11 A Yes.
12 Q How often?
13 A All the time.
14 Q When you say all the time --
15 A Consistently.
16 Q Every day?
17 A Every day.
18 Q Every shift? Multiple times throughout the shift, or just
19 kind of once a shift?
20 A Usually multiple.
21 Q And is that still the case at the Yamhill store today?
22 A Yes.
23 Q Why are some of the reasons that an associate might be
24 reassigned from one station to another?
25 A Depending on how busy we get, how many people we have, if

1 there's a call out. Just the environment of the store.
2 Q So again, I want to be clear. There are certain
3 parameters on once you're assigned to a station, what you do.
4 But the shift lead has the ability to reassign stations?
5 A Yes.
6 Q And that's exercised regularly, multiple times throughout
7 the day, by shift leads?
8 A Yes.
9 Q So again, the stations -- you could go from somebody doing
10 load to somebody doing milkshakes and soup?
11 A Yes.
12 Q Is that different work? Is there different things that
13 somebody's doing if they're putting together a milkshake and
14 making a milkshake, versus doing a -- making a sandwich?
15 A Very different.
16 Q Can, in addition to associates being assigned stations and
17 being reassigned stations by the shift leads, do shift leads
18 also assign associates individual tasks?
19 A Yes.
20 Q Can you give us an example of what sort of ad hoc tasks an
21 associate may be assigned by a shift lead?
22 A So for the morning shift, we do cookies. You can have
23 either the associate them, or whenever they're done cooling,
24 bag them and sticker them to put them out. Or we also do,
25 like, baking. You have to pan them out and serve it through.

1 And then, of course, there's always cleaning tasks, like you
2 know, dishes. Or if you need more prep done, you can send
3 somebody to do prep. Yeah, it's -- it's everything.
4 Q Okay. And in actuality, are those actual assignments that
5 are assigned to associates at the Yamhill store?
6 A Yes.
7 Q How often do the shift leaders assign those type of tasks?
8 Like, what frequency do they assign those tasks to associates
9 at the Yamhill store?
10 A Every day.
11 Q Multiple times throughout the day?
12 A Multiple times throughout the day.
13 Q Again, with those kind of ad hoc tasks, we talked about
14 kind of some cleaning, you know, baking. Those additional
15 tasks beyond just the stations. How do shift leads make a
16 determination of which associate is going to clean, versus
17 which associate might make the cookies, versus which associate
18 might bag the cookies?
19 A It's usually just whoever's, like, not currently doing
20 something on the line, or like, who has the most experience
21 doing it, who's quicker.
22 Q And how does a shift leader understand who's quicker at
23 doing a particular task?
24 A Well, with our, like -- say our morning crew, it's
25 usually, like, the same few people. So you -- you tend to know

1 who's better at doing what.
2 Q And -- and so getting that it's based on the shift
3 leader's observation and assessment of the skills and abilities
4 of the associates?
5 A Yes.
6 Q Okay. And we've -- we've already talked about -- and let
7 me know if it's true for the ad hoc task. But some shift leads
8 may have a different assessment of the skills and abilities of
9 associates, relative to a different shift lead?
10 A Yeah.
11 Q There's nothing that you or the general manager that puts
12 out that says, these are the best people we have for baking
13 cookies, versus cleaning tasks?
14 A Un-huh.
15 Q No?
16 A No.
17 Q All right. And then I understand that there are at -- at
18 three different times of the day, beyond the stations, beyond
19 the ad hoc tasks, there are actual opening tasks, post-peak
20 tasks, and closing tasks that need to be done?
21 A Yes.
22 Q When you were a shift leader, how did you assign those
23 tasks?
24 A I would assign them based on -- well, it depended on the
25 group that I had. But I'd base them off of who I knew was good

1 at certain areas. Like, if it was a back of house task, it
2 would usually go to, you know, our prepper, because he has more
3 familiar with the back of house. As where say the lobby was
4 usually done by a fronter, so I'd assign it to the fronter.
5 Q Okay. And is that how tasks are assigned by shift leads
6 at the Yamhill store today?
7 A That is up to them completely.
8 Q Okay. And when you say up to them completely, it's up to
9 their discretion of how they want to assign those stats?
10 A Yes.
11 Q And you -- have you look at the opening checklist?
12 A Yes.
13 Q Are you familiar with all of the tasks are listed on
14 there?
15 A Yes.
16 Q And is it your testimony today that the shift leads -- or
17 the MIC, I should say -- we've talked about when you're the MIC
18 and when you're not the MIC, when shift leads are the MIC. Is
19 it your testimony today that the MIC is the one that assigns
20 those tasks?
21 A Yes.
22 Q And they -- it's their discretion to assign those tasks to
23 whichever associate?
24 A Yeah.
25 Q I want to talk to you a little bit about responsibly

1 directing the -- the work of the associates on the part of the
2 shift lead. Are the shift leads responsible is the task
3 assigned to associates do not get done?
4 A Yes.
5 Q What would that look like?
6 A What do you mean?
7 Q If -- let's -- I don't want to have a hypothetical. I
8 want to have a -- kind of a -- a real example. If the
9 closing -- you tell me if this has actually happened.
10 A Um-hum.
11 Q The -- all of the closing tasks don't get done. You come
12 in the shop the next morning, and there's -- tables are all
13 askew or they're not wiped down.
14 A Um-hum.
15 Q Has that ever happened?
16 A Yes.
17 Q Hopefully, you know, that -- it doesn't happen with
18 regularity. But how often does that happen?
19 A It's not very frequent, but you do get those nights where
20 they -- they were in a rush, type of thing.
21 Q Okay. If that's the case, and you are reporting to -- at
22 6 a.m. the next morning, take us through what happens, with
23 respect to whoever was the shift lead the night before.
24 A So usually, I would just, you know, take down -- do a
25 manager log, see what was done and what wasn't. Once the

1 manager from the night before comes in, I'd sit down and have a
2 talk with them, based on what I had seen, and see, like, you
3 know, where maybe they could have messed up, or if they didn't
4 actually do their walkthrough. And just kind of, you know,
5 okay, let's -- let's not do that this time. Let's try to fix
6 it.
7 HEARING OFFICER WIANT: I'm going to pause you for one
8 moment. I do not see Mr. Medina.
9 Thank you. You may continue, Mr. Abraham.
10 Q BY MR. ABRAHAM: All right. And on those -- again, the
11 point is to make sure everybody gets their work done. But when
12 it breaks down, and there's the conversation that you have to
13 have with the shift leader, what happens when that's repeated a
14 second or a third time?
15 A Then, I would have to have a discussion with the general
16 manager to see what our next steps would be.
17 Q Okay. All right. There was discussion about -- I've gone
18 through kind of the assignment of tasks. There's some
19 discussion about rewarding employees. I'll -- I'll move to
20 that now, and then we'll take of time cards in a little bit
21 here. When you were a shift leader, did you have the authority
22 to reward associates?
23 A Yes.
24 Q In what ways did you have authority to reward associates?
25 A So usually, like, if I had to call somebody in, or

1 somebody was just doing a fabulous job, I would do a cash out
2 and just give them, like, a cash reward. Or you know, giving
3 out, like, a free meal, if they wanted, like, a shake or
4 something. Just cash out for them, too.
5 Q Okay. So it didn't even have to be a gift card. It could
6 just be cash?
7 A Yeah.
8 Q And when you were a shift leader, how often do you think
9 you would reward employees?
10 A It wasn't too frequently, but it would be, like, maybe
11 once every two weeks.
12 Q Okay. Did anyone ever come to you and say, hey, you're
13 not following the rules of how we give out rewards to
14 associates?
15 A No.
16 Q Did you ever have any -- were you ever corrected for
17 giving out rewards too often?
18 A No.
19 Q Were you ever told that there is a formula that we have to
20 follow with giving out rewards?
21 A No.
22 Q And is that how the shift leaders at the Portland store
23 give out rewards today?
24 A Yes.
25 Q Were you ever told that there is a formula that we have to

1 follow when giving out rewards?
2 A No.
3 Q Let's talk about adjusting time cards. As a shift leader,
4 leader, did you have the authority to adjust associate's time
5 cards?
6 A Yes.
7 Q And under what circumstances would you do that?
8 A If they forgot to clock in, if they didn't clock out.
9 That's usually about it, though.
10 Q And did you do those when you were the MIC for the store
11 as a shift leader?
12 A Yeah.
13 Q And is that how shift leads do it today at the Portland
14 store?
15 A Yes.
16 Q And we've seen the regularity of that. How often, in your
17 experience, did that actually happen?
18 A Pretty frequently.
19 Q And when you say pretty frequently, is that one employee
20 per shift, one employee per day, one employee for every two
21 days?
22 A One every two days.
23 Q Okay. And all of the shift leads have the ability to
24 correct the time cards?
25 A Yes.

1 MR. ABRAHAM: Okay, I have no further questions.
2 HEARING OFFICER WIANT: I have a couple of questions for
3 you, Ms. McKinnis. How often, when you were shift lead back in
4 August and -- and before, were you the MIC during your shifts?
5 THE WITNESS: Very frequently. It was five days out of
6 the week.
7 HEARING OFFICER WIANT: So you were acting as MIC five
8 days out of the week?
9 THE WITNESS: Yes.
10 HEARING OFFICER WIANT: Okay. And were you working
11 afternoon shifts?
12 THE WITNESS: No, I was a morning person.
13 HEARING OFFICER WIANT: Okay. And currently, you started
14 as an assistant general manager, you're working as MIC about
15 one day -- or one shift a week?
16 THE WITNESS: Yes.
17 HEARING OFFICER WIANT: Okay. And so how do you know who
18 is acting as MIC?
19 THE WITNESS: It's usually a verbal thing, whenever we get
20 in, or like, whenever I'm making the schedules. Okay, so this
21 is game plan, what we're going to do.
22 HEARING OFFICER WIANT: And so who is verbally telling you
23 that you are going to be MIC currently?
24 THE WITNESS: So I am currently the one who's doing the
25 schedules, so I'll schedule it so where I'll be the first one

1 in, and that's how we kind of know. And then take Saturdays,
2 for instance. I do prep, so my secondary coming in is going to
3 be the MIC.
4 HEARING OFFICER WIANT: And when you say you are currently
5 the one doing the schedules, does that mean when you come into
6 the shop, you're filling out that -- I think it was, like, a
7 tracking board?
8 THE WITNESS: The deployment map?
9 HEARING OFFICER WIANT: Um-hum.
10 THE WITNESS: No.
11 HEARING OFFICER WIANT: So who is filling out the
12 deployment map?
13 THE WITNESS: It's supposed to be the MICs, or it can also
14 be a verbal thing whenever, you know, we're getting closer to
15 the lunch rush, so that everybody just knows where they need to
16 be.
17 HEARING OFFICER WIANT: And so who is -- who is telling
18 people where they need to be?
19 THE WITNESS: Either me, as the MIC, Mimi, as the MIC, or
20 one of our shift leads, whenever they're the MIC.
21 HEARING OFFICER WIANT: And so who tells the shift lead
22 that they're acting as MIC that day?
23 THE WITNESS: That would be me or Mimi.
24 HEARING OFFICER WIANT: Okay. And so since you said that
25 you were acting as MIC about once a week, and you said Mimi was

1 acting as MIC about once a week?
2 THE WITNESS: No.
3 HEARING OFFICER WIANT: How -- how much -- how often is
4 she acting as MIC?
5 THE WITNESS: That would be a question for her.
6 HEARING OFFICER WIANT: And so how often is Samuel Lawson
7 acting as MIC?
8 THE WITNESS: It would be usually about once a week.
9 HEARING OFFICER WIANT: And how often is Saphira Allen
10 working as MIC?
11 THE WITNESS: That would be five days a week.
12 HEARING OFFICER WIANT: And how often is Naaman Yarbrough
13 working as MIC?
14 THE WITNESS: Usually two.
15 HEARING OFFICER WIANT: Okay. So typically, it's Saphira
16 Allen?
17 THE WITNESS: Yes.
18 HEARING OFFICER WIANT: Okay. So we went through those
19 checklists. There's some testimony. There's three checklists,
20 one at the beginning, one at the peak, and one at the end of
21 the day; is that correct?
22 THE WITNESS: Yeah.
23 HEARING OFFICER WIANT: And so these checklists have a
24 number of duties on them. Are the duties on the checklist all
25 associated with the associates?

1 THE WITNESS: Yes.

2 HEARING OFFICER WIANT: And are the associates aware that

3 these are the duties that they -- they work every day?

4 THE WITNESS: Yes.

5 HEARING OFFICER WIANT: Or at least the duties that need

6 to be done in the shop every day?

7 THE WITNESS: Yes.

8 HEARING OFFICER WIANT: And so how often is the MIC -- or

9 I guess, how often did you as the shift leader, working as an

10 MIC occasionally, actually have to assign those duties to

11 employees rather than employees just have already done them?

12 THE WITNESS: A lot of the time it's more, like, you,

13 yourself, have to do your manager walk to figure out what

14 actually needs to be done rather than going off of the list.

15 HEARING OFFICER WIANT: And so how often would you -- in

16 that walk, when you're acting as MIC in your shift leader

17 role -- have to assign particular duties to employees?

18 THE WITNESS: Multiple times a day.

19 HEARING OFFICER WIANT: Okay. And as a shi -- when you

20 were a shift leader, how did you know how to prioritize those

21 duties?

22 THE WITNESS: It was really just based off of -- like,

23 okay, so food and the line comes first. Then, like, obviously,

24 cleanliness goes along with it. And then, you know, you

25 trickle down. Back-of-house isn't necessarily as important as

1 what customers see type of thing.
2 HEARING OFFICER WIANT: And that order that you
3 described -- the prioritization order -- is that written down
4 somewhere in a policy or procedure?
5 THE WITNESS: Not that I'm aware of.
6 HEARING OFFICER WIANT: And that's just what you as a
7 former shift lead and former -- formerly working as the MIC
8 role -- decided?
9 THE WITNESS: Yes.
10 HEARING OFFICER WIANT: So could a shift lead -- or does a
11 shift lead -- ever decide that the back-of-house is actually
12 more important than the front-of-house?
13 THE WITNESS: Yes. That's completely up to them.
14 HEARING OFFICER WIANT: Okay. So the shift leads have
15 autonomy in dec -- in determining what is -- what needs to be
16 prioritized?
17 THE WITNESS: Yes.
18 HEARING OFFICER WIANT: So they could prioritize the
19 cleaning of the fans over the temperature checks?
20 THE WITNESS: Yeah.
21 HEARING OFFICER WIANT: Okay. This kind of goes to the --
22 what I was getting at before, but it sounds there's a lot of
23 assignment of duties that come from the shift leads when
24 they're working in the MIC role or the MI -- the manager's
25 working in the MIC role. But are employees just doing nothing

1 until they're assigned duties?
2 THE WITNESS: You would hope not. But usually, the
3 employees are really good about coming up to the manager if
4 they aren't doing anything and asking, okay, so what needs to
5 be done first?
6 HEARING OFFICER WIANT: And so employees if they don't
7 have anything to do they come up to the MIC and ask what --
8 what needs to be done?
9 THE WITNESS: Yes.
10 HEARING OFFICER WIANT: Employees don't have just typical
11 tasks that they are -- are going to fill their time with until
12 they're assigned other things?
13 THE WITNESS: Usually, no.
14 HEARING OFFICER WIANT: Okay. Outside of that
15 checklist -- or those three checklists that -- that we -- we
16 have testimony over -- are there any other duties that shift
17 leaders can assign employees?
18 THE WITNESS: Yeah. There's always, like, our deep-
19 cleaning things, like the vents in the walls and stuff like
20 that, like -- because they get kind of gross. And then just
21 little things that usually you wouldn't do.
22 HEARING OFFICER WIANT: So when you were a shift lead back
23 in -- in August -- about six months ago -- did you assign any
24 employee to do this vent cleaning?
25 THE WITNESS: Yeah.

1 HEARING OFFICER WIANT: Okay. Is there anything that a
2 shift lead acting in an MIC capacity can't assign?
3 THE WITNESS: No.
4 HEARING OFFICER WIANT: Can a shift lead -- acting in a
5 MIC capacity assign an employee to correct the payroll?
6 THE WITNESS: No.
7 HEARING OFFICER WIANT: How often are shift leads working
8 but not MICs?
9 THE WITNESS: Well, for instance, we have Naaman. He
10 spends three days out of the week as a mid, so he can either --
11 whenever he comes in it can get handed off to him until Saphira
12 comes in. But it's really -- it's not that common.
13 HEARING OFFICER WIANT: And so what are the additional
14 duties that Naaman does as shift leader but not as MIC that --
15 okay -- that associates and trainers don't do?
16 THE WITNESS: That would be a question for Mimi.
17 HEARING OFFICER WIANT: Okay. So when -- and this might
18 also be a question for Mimi -- but when -- I guess, how is it
19 determined that somebody is a shift leader over an associate or
20 certified trainer if they are not able to act in the MIC
21 capacity?
22 THE WITNESS: Well, so whenever there is a shift leader
23 who isn't MIC they can still make the decisions as an MIC.
24 It's just usually, like -- it's usually ran by the actual MIC,
25 if that is the case.

1 HEARING OFFICER WIANT: Okay. If a shift leader is
2 working and they're not an MIC do they assign duties?
3 THE WITNESS: They can.
4 HEARING OFFICER WIANT: If a shift leader is working and
5 not as an MIC can they provide rewards? You spoke about, like,
6 cash-outs.
7 THE WITNESS: Yes.
8 HEARING OFFICER WIANT: Okay. Okay. If a shift leader is
9 working at -- but not as an MIC can they reassign the -- the
10 station that somebody is working at?
11 THE WITNESS: Yeah.
12 HEARING OFFICER WIANT: I heard that there is a list of
13 where everybody -- or what stations employees have been trained
14 at; is that correct?
15 THE WITNESS: Yes.
16 HEARING OFFICER WIANT: Okay. And is that created by -- I
17 guess, who is that list created by?
18 THE WITNESS: I'm not particularly sure.
19 HEARING OFFICER WIANT: Okay. You don't have a hand in
20 creating that list?
21 THE WITNESS: No.
22 HEARING OFFICER WIANT: And you didn't have a hand in
23 creating that list when you were a shift lead?
24 THE WITNESS: No.
25 HEARING OFFICER WIANT: Is there always a shift lead

1 working?

2 THE WITNESS: Not always, but throughout the day, yes.

3 HEARING OFFICER WIANT: Okay. Like, at lea -- at least

4 one of the shifts there'll be a shift lead?

5 THE WITNESS: Oh, yeah.

6 HEARING OFFICER WIANT: Is there always a shift lead

7 working the, I guess, afternoon-evening shift -- the closing

8 shift?

9 THE WITNESS: Yeah.

10 HEARING OFFICER WIANT: Okay. We spoke a little bit about

11 the giving of rewards. You said the -- you know, there's a

12 cash-out. There's -- there's been talk of gift cards, maybe a

13 meal. When you were a shift lead you said that you did provide

14 cash-outs; is that correct?

15 THE WITNESS: Yes.

16 HEARING OFFICER WIANT: Did you nee -- need approval from

17 anybody?

18 THE WITNESS: No.

19 HEARING OFFICER WIANT: Is there a policy regarding how

20 much is an appropriate cash-out?

21 THE WITNESS: I believe it's, like, 20 to 30, depending.

22 HEARING OFFICER WIANT: Is there a policy?

23 THE WITNESS: Not the one that I've personally seen.

24 HEARING OFFICER WIANT: Okay. And how do you know there's

25 a threshold between 20 and 30?

1 THE WITNESS: It's always just what, like, our district
2 manager had previously said kind of.
3 HEARING OFFICER WIANT: Okay. And then do you report the
4 cash-outs to anyone?
5 THE WITNESS: It is documented with our signature and
6 reason, but other than that, no.
7 HEARING OFFICER WIANT: And by "our signature" do you mean
8 your assistant manager's signature, or could you sign off on
9 that when you were a shift lead?
10 THE WITNESS: I could sign off on it.
11 HEARING OFFICER WIANT: And you could sign off on it when
12 you were a shift lead, either working as an MIC or not working
13 as an MIC?
14 THE WITNESS: Yes.
15 HEARING OFFICER WIANT: Okay. When shift leads are
16 working not as an MIC are they able to adjust time cards?
17 THE WITNESS: Yes.
18 HEARING OFFICER WIANT: Is there -- is there a policy
19 regarding the adjustment of those time cards?
20 THE WITNESS: Not that I'm aware of.
21 HEARING OFFICER WIANT: Do you have any examples of why a
22 shift lead would adjust a time card?
23 THE WITNESS: Just if they didn't clock out or say they
24 clocked in too late. That's usually it, though.
25 HEARING OFFICER WIANT: Okay. And then do you have any

1 examples -- when you were a shift lead, so I know I -- I'm
2 making you think back six months -- of times that you provided
3 a employee a cash reward and why that employee received that
4 cash reward?
5 THE WITNESS: So whenever I was a shift lead, we had to
6 deal with a lot of call-outs and stuff like that, so if I could
7 get, like, somebody from another shop to agree to come in I
8 would give them, like, a cash reward as a thank you.
9 HEARING OFFICER WIANT: Okay. Great example. Thank you.
10 Give me one minute. I think I've covered my questions. So you
11 gave me one example of something that's not on the list that
12 you assigned as a shift lead to employees and that was that
13 vent cleaning. Can you think of any other examples of items
14 that you've assigned that are not on either of those three
15 checklists? When you were a shift lead; excuse me.
16 THE WITNESS: Well, I mean, I don't -- can't recall
17 everything that's on the list currently. But there's things
18 like cleaning the walls, reorganizing the back-of-house, and
19 making sure that, like, everything's dusted off and everything
20 like that.
21 HEARING OFFICER WIANT: Can shift leads working as MICs
22 send people home?
23 THE WITNESS: Yes.
24 HEARING OFFICER WIANT: And so if there's not enough work
25 or there's not enough foot traffic, shift leads could somebody

1 home?

2 THE WITNESS: Yes.

3 HEARING OFFICER WIANT: And how would a shift lead make

4 that determination?

5 THE WITNESS: So there are reports that they can look at

6 and see where our labor is -- if it's too high. Usually, an

7 MIC will ask to be, like, hey, does anybody want to go home?

8 If not, then they'll choose, usually, like, the person who got

9 in the earliest or maybe somebody who isn't staying active in

10 the shop. And that's how they'll do that.

11 HEARING OFFICER WIANT: When you say you can look at

12 reports, is that a report indicting you have too many people

13 versus the amount of sales?

14 THE WITNESS: Yes.

15 HEARING OFFICER WIANT: And if there is a ton of people

16 coming in and there's no problem with the amount of sales, can

17 a shift lead still send somebody home?

18 THE WITNESS: Yes. Say, if they're displaying maybe an

19 attitude problem and it's not -- you know, they're just not

20 letting up on it, then they can absolutely send somebody home.

21 HEARING OFFICER WIANT: Is that considered a discipline?

22 THE WITNESS: It would be.

23 HEARING OFFICER WIANT: So shift leads have the ability to

24 discipline employees?

25 THE WITNESS: Yes.

1 HEARING OFFICER WIANT: Do they have to -- do shift leads
2 have to gain approval to discipline employees or send somebody
3 home in that respect?
4 THE WITNESS: No.
5 HEARING OFFICER WIANT: And all shift leads are able to do
6 that?
7 THE WITNESS: Yes.
8 HEARING OFFICER WIANT: So at this store, Allen, Lawson,
9 and Yarbrough all have the power to discipline -- i.e. send
10 somebody home?
11 THE WITNESS: Yes.
12 HEARING OFFICER WIANT: And have they?
13 THE WITNESS: I am not very sure if they have.
14 HEARING OFFICER WIANT: And did you send somebody home
15 when you were a shift lead?
16 THE WITNESS: Yes.
17 HEARING OFFICER WIANT: Okay. And do you have to report
18 that to somebody?
19 THE WITNESS: Not on the instance, but it is a good thing
20 to talk to the GM just so we can, you know, sit down and have a
21 proper conversation with the associate afterward.
22 HEARING OFFICER WIANT: Are there any other examples of
23 you as shift lead, prior to your current role, disciplining
24 employees other than sending them home for having an attitude?
25 THE WITNESS: No.

1 HEARING OFFICER WIANT: Okay. Okay. Give me one moment.
2 Are shift leads able to provide written warnings to employees?
3 THE WITNESS: That would be a question for Mimi.
4 HEARING OFFICER WIANT: Okay. But the only circumstance
5 to issue discipline for shift leads -- or I guess, shift leads
6 issuing discipline to other employees is sending them home?
7 THE WITNESS: As far as I'm aware.
8 HEARING OFFICER WIANT: When you were a shift lead back
9 six months ago, was there ever a time that you were held
10 accountable for the performance of your associate's work?
11 THE WITNESS: Yes.
12 HEARING OFFICER WIANT: And how were you held accountable
13 for it?
14 THE WITNESS: It was just kind of a sit-down talk, like,
15 you got to make sure that all of these things are done before
16 you leave.
17 HEARING OFFICER WIANT: Okay. Like a -- a coaching or a
18 verbal warning?
19 THE WITNESS: Yeah.
20 HEARING OFFICER WIANT: Okay. Were -- did you ever
21 receive a written warning because your associates did not
22 perform to the level that was expected?
23 THE WITNESS: No.
24 HEARING OFFICER WIANT: Okay. All right. Mr. Abraham, do
25 you have any follow-up questions?

1 MR. ABRAHAM: Sure. Just a -- a few, and I mean that.
2 **RESUMED DIRECT EXAMINATION**
3 Q BY MR. ABRAHAM: So if -- if you had multiple times where
4 your crew didn't do what they were supposed to do would your
5 verbal coaching progress to written discipline?
6 A Yeah, I'm sure.
7 Q Okay. Actually, I -- I take that back. I only have one
8 question there.
9 HEARING OFFICER WIANT: And how -- how do you know that it
10 would progress to written discipline?
11 THE WITNESS: Because then it shows a repeated behavior in
12 the shift lead that isn't being fixed, not just the associates,
13 and that's not something that's necessarily okay.
14 HEARING OFFICER WIANT: And so have you -- do you know of
15 other shift leads that have received discipline because there
16 have been repeated issues? Is there a policy indicated --
17 indicating that there -- if there would be repeated issues he
18 would be disciplined? How do you -- how do you know that you
19 would receive that?
20 THE WITNESS: I don't know of any policies but it is
21 something that, like, our -- or I should say, my old shop -- it
22 is something that we had talked about before.
23 HEARING OFFICER WIANT: So I guess when you received that
24 verbal warning, indicting, you know, there's -- there's an
25 issue with your associates' performance, you're on the hook for

1 that -- did they you it could lead to further discipline if it
2 didn't change?
3 THE WITNESS: Yes.
4 HEARING OFFICER WIANT: Okay. Mr. Abraham?
5 MR. ABRAHAM: Nothing else.
6 HEARING OFFICER WIANT: All right. Ms. McKinnis, thank
7 you so much for your time. You may step off the stand. I will
8 ask that you remain around just in the case that we need to
9 pull you back up. But otherwise, I appreciate your time today.
10 THE WITNESS: Thank you.
11 HEARING OFFICER WIANT: Thank you so much. We can go off
12 the record.
13 (Off the record at 12:54 p.m.)
14 HEARING OFFICER WIANT: We're back on the record after a
15 short break. And the Employer has their third witness. Mr.
16 Abraham?
17 MR. ABRAHAM: Yes. And the Employer calls Mima -- Mima.
18 That's Miriam and Mimi put together. Miriam Arteaga.
19 HEARING OFFICER WIANT: Hi, Ms. Arteaga. My name is Emily
20 Wiant. I'm the hearing officer today. Will you please go
21 ahead and raise your right hand, and I will swear you in.
22 Whereupon,
23 **MIRIAM ARTEAGA**
24 having been duly sworn, was called as a witness herein and was
25 examined and testified, telephonically as follows:

1 HEARING OFFICER WIANT: Wonderful. And just as a
2 reminder, there are -- we are trying to create a clear written
3 transcript from a video conference. It can be confusing if we
4 have folks talking over each other, so please just make sure
5 you take a moment before answering any question so we can
6 create such a record. All right. Your witness.
7 **DIRECT EXAMINATION**
8 Q BY MR. ABRAHAM: Okay. And Ms. Arteaga, can you state and
9 spell your first and last name for the record?
10 A Miriam M-I-R-I-A-M, Arteaga A-R-T-E-A-G-A.
11 Q Okay. And where do you work?
12 A Potbelly Sandwich Shop.
13 Q And what is your current position at Potbelly?
14 A General manager.
15 Q And how long have you worked for Potbelly?
16 A Five years.
17 Q And within those five years, what positions have you held?
18 A I was an associate, a certified trainer, backline
19 coordinator, catering coordinator, assistant manager, and then
20 my position right now, general manager.
21 Q Okay. One position I didn't hear mentioned in that
22 list -- I want to make sure -- did you ever --
23 A Oh, shift leader, yes, yes, shift leader.
24 Q Okay. So you did at one point in your career also work in
25 a shift leader capacity?

1 A Yes.
2 Q Okay. All right. In what store do you serve as -- with
3 respect to the general manager?
4 A As of right now, I'm at the Portland location, but I have
5 also ran the 3rd & Clay location and the Beaverton location as
6 a GM.
7 Q Okay. And do the duties of a shift leader vary between
8 locations?
9 A No.
10 Q All right. I want to focus, now, on the shift leaders at
11 the Yamhill store. Now, I understand at this point in time on
12 the employee roster for the Yamhill store there are three
13 individuals who hold the classification of shift leader; is
14 that right?
15 A Correct.
16 Q There's been some testimony about the phrase MIC --
17 manager in charge -- and shift leaders, and when a general
18 manager, like yourself, or assistant general manager or a shift
19 lead are on site who's actually performing in the role of MIC.
20 Can you tell us when -- how that works for you as the
21 general manager of when you may be serving in the capacity as
22 an MIC even though your role as general manager vis-a-vis when
23 a shift leader is also present?
24 A For the most part, I do open most of the week, so I am a 6
25 a.m. to a 3 p.m. But if I do have a shift leader coming in, I

1 do hand off the reins and then usually a shift leader comes in
2 around noon. After the shift leader arrives, I do put myself
3 as -- as an associate. I do hand the reins off to my shift
4 leader and they put me where they need me the most.
5 Q So when you are physically present and when an employee
6 and a shift lead are physically present, who is the MIC?
7 A Shift leader.
8 Q And is that regular?
9 A Regularly.
10 Q Okay. Are there times where you may have a shift leader
11 on site but you continue to have them not do manag -- MIC
12 duties?
13 A I will always put my shift leaders as a manager in charge.
14 Q Okay. Are you familiar with the -- the duties of a shift
15 leader?
16 A Yes.
17 Q And how long ago did you serve in the capacity as a shift
18 leader?
19 A I would say about two years ago.
20 Q Okay. Have you reviewed the job description that is the
21 Employer Exhibit -- I think it's Exhibit 2?
22 A The shift leader description, yes.
23 Q And does that accurately reflect the duties of the shift
24 leader that you performed when you --
25 A Yes.

1 Q And does that also accurately reflect the duties of the
2 shift leaders at the Yamhill store today?
3 A (Inaudible answer).
4 Q There's been testimony already with respect to when a
5 shift leader comes on how they make decisions with respect to
6 assigning stations. When you were a shift leader, how did you
7 assign associates stations?
8 A I prioritize what my customers see first. I would take
9 care of the lobby first and then if my associates need
10 anything, I will touch base with them and then catch them up
11 with where they need help.
12 Q Okay. And how is that -- how are -- shift leaders -- how
13 do they assign stations to associates at the -- the Yamhill
14 store today?
15 A Based off their training and the experience they have with
16 the associates.
17 Q So to flesh that out a little bit, can you give -- give as
18 an example?
19 A Yeah. I can use myself as an example. I -- it took me a
20 year to learn load but as I learned drafts and cash,
21 eventually, they rotated me on load. I was a closer, so on
22 closing shifts you kind of will rotate in each station. So I
23 eventually ended up having to workload. My shift leader knew I
24 wasn't very confident in it but did rotate me in with my
25 training in place or not.

1 Q Okay. There was testimony about kind of a list that is
2 maintained about which associates are qualified on which
3 stations. Do you oversee that list for the Yamhill store?
4 A Yes.
5 Q And when you -- when I say the word "oversee" how does
6 somebody get to -- how do you record that a particular
7 associate is qualified on load station, for example?
8 A So we have a training program called Schoox. Everyone is
9 supposed to complete training within the three stations within
10 the three months. I can let my shift leaders know what has
11 been completed for training for associates or what has not.
12 Q So who provides the actual training to the associate?
13 A So it starts out with my CTs, but if I don't have a CT on
14 schedule it's my shift leaders.
15 Q Okay. And when you say "CT" is that certified trainer?
16 A Correct.
17 Q Okay. So the -- you, as the general manager, are not
18 doing the training for an associate getting certified on load
19 station, for example?
20 A I do do a checklist, so when an associate finishes a
21 training, I do need to sign-off --
22 Q Okay.
23 A -- to say that they have completed that station.
24 Q How do you -- what information do you get -- or where do
25 you get your information to be able to sign off an associate?

1 A Schoox, our training program.
2 Q Okay. Are there any other sources of input that you get
3 with respect to whether somebody -- an associate -- has come --
4 gotten qualified on a particular station?
5 A My shift leaders will provide me feedback about if they
6 feel confident enough where this associate is killing it with
7 that -- in a particular station, and it's time to move on to
8 something else. It's all the shift leader. They have the most
9 experience and exposure to the associate.
10 Q Do you sit with the associate and kind of have a -- a --
11 an assessment with the associate and you make a determination
12 whether they're -- have learned the -- that station or not?
13 A I will touch base about how they feel about their station,
14 but I'm not on their shift to actually see it being executed.
15 It all depends on my shift leaders.
16 Q Okay. So while you may actually, like, write down --
17 A (Indiscernible, simultaneous speech) --
18 Q -- you -- you may sign the -- write off the list and keep
19 the list, but what I'm hearing is you're not actually out there
20 observing the work to be able to say that the person can do the
21 job?
22 A Correct.
23 Q Who -- who do you have to rely on to -- for that
24 information?
25 A CTs and shift leaders.

1 Q Okay. All right. So let's talk about the authority of
2 a -- of a shift leader, vis-a-vis when they're in the MIC role.
3 When a shift leader is in the MIC role, are there any
4 additional authority that they have beyond their shift leader
5 authority?
6 A They are not in charge of write-ups. They can't -- they
7 can do a verbal disciplinary, but it does need to be run by me
8 so that I'm aware of any bad behaviors or anything not being
9 done correctly.
10 Q Okay. All right. And there've been -- there's been
11 testimony about, really, kind of multiple assignments, but
12 coming in different categories. One is the station
13 assignments. How do shift leaders assign associates to
14 particular stations?
15 A Their training do (sic) come in place, but also their
16 experience with the associate. It all depends where the -- the
17 associate is in training, but for the most part, the shift
18 leaders are in charge of knowing what associates know what
19 stations.
20 Q And then how would a shift leader decide to put a certain
21 associate at a -- match them with the station?
22 A Since they have more exposure, they know who their strong
23 players are. We usually try to put -- or the shift leaders
24 usually try to put their aces in places, but at the same time,
25 they must also put themselves in a position where they're

1 available to their associates.
2 Q Okay. Do the shift leaders -- even you're there on
3 site -- do the shift leaders have to come to you and get
4 approval for the station assignments?
5 A No.
6 Q Do they always have to follow a certain formula of
7 assigning station assignments?
8 A No.
9 Q Throughout the course of the day, do shift leaders
10 reassign employ -- associates -- to different stations?
11 A Yes.
12 Q How often does that happen?
13 A Regularly.
14 Q Is that every shift?
15 A Every shift.
16 Q Is it more than one time a shift?
17 A Correct.
18 Q So there's the assignment of the stations. And then we
19 also talked about ad hoc kind of assignments and tasks.
20 There's been -- the last witness talked about kind of deeper
21 cleaning, like cleaning of vents. The first witness talked
22 about just general cleaning duties that's mentioned in the job
23 description for the shift leaders. When you were the shift
24 lead did you have sort of those ad hoc assignments that you had
25 to assign associates to complete?

1 A Yes.
2 Q And what would be an example of some of those, sort of, ad
3 hoc assignments?
4 A Let's see. I'll use this as an example. Like, let's say
5 I wasn't able to put my food order away, I would have my
6 associates and shift leaders assign to help put away the food
7 order.
8 Q And -- and explain that a little bit more. A food
9 order -- what is that?
10 A So food order -- it could be, like, dry stock items, like,
11 putting the chips on the chip rack, putting away a jar of hot
12 peppers under the oven. Just small tasks that, you know, I
13 could use some help on on daily shifts.
14 Q Okay. And are those things that the associates come up to
15 you and say, hey, I got nothing to do so I'm going to go ahead
16 and do this, or do they come up to you and -- and how does that
17 get assigned?
18 A As soon as the associates clock in they'll ask who's the
19 MIC shift leader. Once they go check in with the shift leader
20 and the shift leader should prioritize what the customer sees
21 first. And then they'll assign the task by priority.
22 Q Okay. Does the shift leader have to prioritize what the
23 customer sees first?
24 A No.
25 Q And the associates, again -- they -- they've got their

1 primary station that are -- they're assigned to, but when
2 they're not engaged in their primary assignment and -- they
3 don't just sit there and twiddle their thumbs. What do they
4 do?
5 A I'll use cash, for example. If you're working cash,
6 you're also a fronter. If you have no customers in front of
7 you you are in charge of touching up the tables, maybe pushing
8 down all the trash or even changing the trashes. But you also
9 want to let your shift leader in charge that you are stepping
10 away for a second.
11 Q And then that shift leader at that point in time can say,
12 yep, that's what I want you to do or no, you do something else?
13 A Correct.
14 Q Is that what actually happens?
15 A Yes.
16 Q We've talked about kind of those ad hoc things that come
17 up. Do associates always know what ad hoc tasks the shift
18 leader may have that needs to be done?
19 A No.
20 Q So even if the shift lea -- an associate might think,
21 okay, well, I know that some of the daily tasks that at some
22 point the shift leader is going to ask me to do -- the ad hoc
23 tasks -- the associates have no idea what's on the agenda for
24 those, correct?
25 A Correct. We do rotate our closing shift associates with

1 the morning people, so they do need some reminders or are not
2 aware of some -- some tasks.
3 Q Okay. So you'll have folks that kind of maybe get used to
4 all of the routine tasks that the shift leader's going to come
5 assign them or could come assign them, but then they'll go from
6 the opening checklist to the close checklist, and they're not
7 comfor -- or they're not used to those assignment?
8 A Correct.
9 Q And there was testimony earlier that not every assignment
10 that's on that task list every day has to be done. How does --
11 when the shift leader goes through the checklist, how would
12 the -- for example, like, wiping down the tables -- how would
13 the shift leader determine for a closing shift if the tables
14 need to be wiped down or not?
15 A For the shift leaders -- it's definitely through looking.
16 You definitely want to do a scan of the room and see what needs
17 to be touched up.
18 Q So even if an associate thinks, okay, I know that the
19 shift leaders could ask me to go touch up the tables, the shift
20 leader has to actually take that inspection, make a
21 determination that that work needs to be assigned before the
22 associate goes and do -- does it?
23 A Correct.
24 Q Okay. So we've talked about the assignment of stations.
25 We've talked about the assignment of ad hoc tasks that just

1 kind of come up as the shift leader has work that needs to be
2 done. And we've talked about the more formal -- three
3 different tasks during the course of the shift as far as the
4 assignment of work goes. And all of those again -- are there
5 any of those tasks when they're assigning to -- the shift
6 leaders are assigning to an associate that they have to come
7 and say, hey, general manager, I'm going to assign this task to
8 this associate?
9 A No.
10 Q Are they ever given a formula or direction this is how you
11 must assign these additional tasks?
12 A No.
13 Q Or you must assign the stations to the same person every
14 day?
15 A No.
16 Q The most senior person gets to do cash so they don't have
17 to get their hands dirty in food?
18 A No.
19 Q Okay. There was also some testimony with respect to when
20 the shift leaders -- and I want to make sure I'm clear for the
21 record that we covered this -- when the shift leaders may
22 have -- not be in the MIC because there's a different shift
23 leader that's in that MIC role -- do they still have all of the
24 authority that's listed in their shift leader job description?
25 A Yes.

1 Q So when they step into the role of MIC do they lose the
2 authority that they have to do all of the assignment of tasks
3 that are in their job description?
4 A No.
5 Q Let's talk about kind of the responsibility of the shift
6 leads, especially the MIC, maybe, on the night shift is the
7 example that we've been using. And the example's been -- just
8 indicative if the crew doesn't do or the associates don't do
9 the tasks that's assigned. So when a shift lead is -- is --
10 associates -- don't complete the work that they're supposed to
11 do what happens with the shift lead?
12 A For example, I am opening manager, so I foresee (sic) what
13 the closing shifts look like in the morning. I will take notes
14 as to what was missed. I'll have a talk with the shift lead,
15 touch base to see what happened to -- to see why that couldn't
16 have gotten done. Then I'll -- I'll have the shift lead relay
17 the message back to the associates. And then I will also go
18 around and touch base with the associates to see if the shift
19 leader had actually passed on the message.
20 Q Okay. Have you seen a situation where a shift lead -- and
21 again, hopefully, this is few and far between -- but who has
22 repeatedly or over time repeatedly had their associates fail to
23 complete the tasks that they're supposed to have completed?
24 A Not regularly, but there -- there's some shifts where it
25 does happen. Usually, having one talk with the shift leader

1 and then touching base with the associates, it gets corrected.
2 Q Okay. Have you ever seen it where it didn't get corrected
3 after just talking to the shift lead and some progressive level
4 of corrective action needed to be imposed?
5 A Not while I was a GM at this location.
6 Q Have you ever seen a shift leader have that happen,
7 though? Not -- not under your watch, but have you seen in your
8 five years of experience with Potbelly, have you seen that
9 happen?
10 A Yes.
11 Q Was there a written corrective action or a written warning
12 that was issued to the shift leader?
13 A Correct.
14 Q And again, so the record's clear, it was based on the fact
15 that the shift leader's crew didn't complete the task that the
16 shift leader needed to get taken care of?
17 A Correct.
18 Q Let's -- let's talk about rewards for a second. Are shift
19 leaders -- there's been testimony that they reward associates?
20 A Correct.
21 Q How do they reward associates?
22 A They are able to do employee appreciation, which is the
23 same as a cash reward. And they're also allowed to do gift
24 cards as well -- or manager comp meals.
25 Q Okay. And let's talk about, briefly, let's touch on time

1 cards. Are associates able to adjust time cards?
2 A No.
3 Q Are shift leaders able to adjust time cards?
4 A Correct.
5 Q Do they have to check in with you before they adjust time
6 cards?
7 A No.
8 Q Okay. All right. Last area I want to talk to you about
9 that was discussed was sending employees home. Shift leaders
10 are able to send employees home?
11 A Correct.
12 Q Under what circumstances?
13 A There -- if there is a behavioral problem. That or
14 they're sick. But I would say those two are the main reasons
15 you're able to send someone -- or well, if it's really slow,
16 you -- you're more than welcome to send someone home. If that
17 is the case, it's usually for our slow days.
18 Q Okay. And do they need to -- before they're going to send
19 somebody home -- like, again, before they send somebody home --
20 they make the decision, they're going to send somebody home --
21 do they need to check in with you and get prior approval before
22 they engage in sending someone home?
23 A No.
24 Q Do they have to get a prior approval from the assistant
25 general manager?

1 A No.
2 Q Do they have to get prior approval from anyone at
3 Potbelly?
4 A No.
5 Q Mimi, those are all the questions that I have for you.
6 Thank you.
7 HEARING OFFICER WIANT: May I call you Mimi?
8 THE WITNESS: Yes.
9 HEARING OFFICER WIANT: Wonderful. Thank you, Mimi. Just
10 touching -- I have quite a few questions for you. See what
11 we're able to answer. But most recently Mr. Abraham was
12 discussing sending people home. Now, when shift leads are
13 sending -- or when they send people home, are they acting just
14 as a shift lead or an MIC?
15 THE WITNESS: MIC.
16 HEARING OFFICER WIANT: So when an MIC send -- sends
17 somebody home, are those associates losing out on those hours
18 of pay?
19 THE WITNESS: Correct.
20 HEARING OFFICER WIANT: So does the Employer consider this
21 a form of discipline?
22 THE WITNESS: Correct.
23 HEARING OFFICER WIANT: Okay. So MICs are able to
24 discipline employees?
25 THE WITNESS: Yes.

1 HEARING OFFICER WIANT: And let's talk about how often
2 employees are working as MICs. How often are you an MIC?
3 THE WITNESS: Only in the morning and then after lunch,
4 usually 12:00, I pass it on to my shi -- my first shift lead.
5 HEARING OFFICER WIANT: Okay. So every morning that you
6 are working you are the MIC?
7 THE WITNESS: Correct.
8 HEARING OFFICER WIANT: Okay. And how often is Starr
9 McKinnis working as MIC?
10 THE WITNESS: I would say one shift throughout one week.
11 HEARING OFFICER WIANT: Once a week. And how is it
12 determined --
13 MR. ABRAHAM: And --
14 HEARING OFFICER WIANT: -- oh, go ahead.
15 MR. ABRAHAM: And ma'am, here I want to -- I want to
16 clarify something for the record here, if I may.
17 Q BY MR. ABRAHAM: Mimi, when you are MIC, is there a shift
18 lead even physically on site?
19 A No.
20 HEARING OFFICER WIANT: Okay. I have a follow-up question
21 to that. So it seems like you work 6 -- 6 a.m. to about 3 or
22 3:30 Monday through Friday; does that sound right? Monday
23 through Thursday?
24 THE WITNESS: Correct.
25 HEARING OFFICER WIANT: Correct. And it also appears

1 that, at least in Exhibit 4, the manager's schedule, Samuel
2 Lawson is working at that same time?
3 THE WITNESS: Correct.
4 HEARING OFFICER WIANT: And so Samuel Lawson is a shift
5 lead, correct?
6 THE WITNESS: Correct.
7 HEARING OFFICER WIANT: So it is true that the time --
8 that sometimes when you are working there are shift leads
9 working?
10 THE WITNESS: Yes.
11 HEARING OFFICER WIANT: Now, on the occasions where -- I
12 think it's just Mr. Lawson who is working in the mornings -- on
13 the occasions where Mr. Lawson is working in the morning and
14 you are also working in the morning, who is manager in charge?
15 THE WITNESS: I am.
16 HEARING OFFICER WIANT: Okay. And so when you are manager
17 in charge and there is another shift lead working, but they are
18 not acting in a manager in charge capacity, how is that shift
19 lead's work different than other associates or certified
20 trainers?
21 THE WITNESS: Certified trainers are in charge of new
22 hires. Shift leaders are in charge of making sure that our CTs
23 are executing their training and also checking up to see if
24 they are following the Potbelly values. If I do have a shift
25 leader on my shift, I would regularly try to put them as MIC,

1 but on a regular basis, my shift leader is my prepper in the
2 morning. But if we are working on the line together, we do
3 shift the MIC position.
4 HEARING OFFICER WIANT: Okay. So I just want to make sure
5 I'm clear. When you are working and another shift lead is
6 working, that shift lead is not automatically the MIC. You
7 have to kind of grant that shift lead that position during that
8 time?
9 THE WITNESS: Correct.
10 HEARING OFFICER WIANT: Okay. I also see that -- since
11 you work until 3 or 3:30 -- we have an overlap between shift
12 leads Saphira Allen as well as Naaman Yarbrough; is that
13 correct?
14 THE WITNESS: Correct.
15 HEARING OFFICER WIANT: And so how -- on occasions where
16 you have multiple shift leads, as well as you at the store, how
17 is it decided who is the MIC?
18 THE WITNESS: I will give the reins to the first shift
19 lead, and then I'll put myself in the associate position. And
20 then once I get either the second or the third shift lead, I
21 hand it off to the closing shift manager. And then we'll touch
22 base, and then I will step off and make myself an associate or
23 I will go take care of my general manager duties.
24 HEARING OFFICER WIANT: Okay. And so there are
25 circumstances where you, as well as the three shift leads, are

1 just working as an associate?
2 THE WITNESS: Yes.
3 HEARING OFFICER WIANT: Okay. In your experience -- I
4 guess, what are the distinct differences between a shift lead
5 and a -- and like, what are the additional duties an employee
6 gets when they're the MIC?
7 THE WITNESS: They're in charge of the shop, like, the
8 associate's decision-making -- it's their call. They're
9 responsible for their decisions.
10 HEARING OFFICER WIANT: So we -- we've heard testimony
11 that even when a shift leader is not an MIC they still are able
12 to assign shifts; is that correct?
13 THE WITNESS: Correct.
14 HEARING OFFICER WIANT: Or assign duties and tasks. And
15 so what is the difference between a shift lead and an MIC?
16 THE WITNESS: An MIC -- you're in charge of making sure
17 everyone's had their breaks, the shop looks good, in great
18 condition. The customers are happy, and everyone's well and
19 good.
20 HEARING OFFICER WIANT: And I think I'm getting repetitive
21 here, but I -- I guess, what I'm -- what I've heard so far
22 today is that shift leads have all of those responsibilities
23 whether they're MIC or not?
24 THE WITNESS: Correct.
25 HEARING OFFICER WIANT: And so what is the different

1 between a shift lead and an MIC?

2 THE WITNESS: I'm going to have to go to Nicole for this

3 one.

4 HEARING OFFICER WIANT: Okay. So you don't know?

5 THE WITNESS: (Indiscernible, simultaneous speech) --

6 HEARING OFFICER WIANT: Yeah. Please, don't -- yeah.

7 Don --

8 MR. ABRAHAM: Yeah.

9 HEARING OFFICER WIANT: Don't ask other -- previous

10 witnesses. Okay. So if there are two shift leads on shift,

11 one of them is MIC and one of them is not an MIC. What is the

12 MIC that's doing different than the other shift did?

13 THE WITNESS: The other -- well, the MIC could be taking

14 care of the tasks, and then the shift leader could be

15 overseeing the other associates.

16 HEARING OFFICER WIANT: So when somebody is -- when there

17 are two shift leads on duty -- one of them is an MIC and one of

18 them is just in their shift lead position -- is the MIC

19 supervising the other shift lead?

20 THE WITNESS: They can work as a team, but there's usually

21 just one -- one MIC.

22 HEARING OFFICER WIANT: So that one MIC is overseeing the

23 work of the other shift lead?

24 THE WITNESS: Correct.

25 HEARING OFFICER WIANT: Okay. And how often -- yeah. How

1 many shifts are Saphira Allen working -- is -- is Saphira Allen
2 working as MIC a week on average?
3 THE WITNESS: Five days.
4 HEARING OFFICER WIANT: How many shifts, on average, is
5 Samuel Lawson working as MIC?
6 THE WITNESS: One to two a week.
7 HEARING OFFICER WIANT: And what about -- same question
8 for Naaman Yarbrough?
9 THE WITNESS: Two to three shifts.
10 HEARING OFFICER WIANT: Okay. And so when Allen and
11 Lawson are working on the same shift, it is likely that one of
12 them is supervising the other one?
13 THE WITNESS: Correct.
14 HEARING OFFICER WIANT: Okay. If there are two shift
15 leads working at the same time, one of them is working as the
16 MIC, one of them is not working as the MIC, and one employee
17 has -- one associate has a -- a break in their time? They --
18 they've run out of tasks. Who do they go to for their tasks?
19 THE WITNESS: The MIC.
20 HEARING OFFICER WIANT: Can that shift lead still assign
21 them tasks? The one --
22 THE WITNESS: Correct.
23 HEARING OFFICER WIANT: -- not an MIC?
24 THE WITNESS: Correct.
25 HEARING OFFICER WIANT: And if that shift lead assigned

1 tasks but the MIC determines that that associate should be
2 working different tasks?
3 THE WITNESS: Correct.
4 HEARING OFFICER WIANT: What -- what tasks do -- does that
5 associate work?
6 THE WITNESS: Let's say the shift leader wanted them to
7 take care of the trash, but the manager in charge wanted them
8 to stay at the register.
9 HEARING OFFICER WIANT: What would they do?
10 THE WITNESS: What would they do? I mean, they report to
11 the manager in charge.
12 HEARING OFFICER WIANT: So they would stay at the
13 register?
14 THE WITNESS: Yeah.
15 HEARING OFFICER WIANT: Okay. Can and MIC assign tasks
16 that are not on those three checklists?
17 THE WITNESS: Correct.
18 HEARING OFFICER WIANT: So if an MIC decides that they
19 need an associate to go stand outside and bring customers in
20 could they assign that task to that associate?
21 THE WITNESS: Correct.
22 HEARING OFFICER WIANT: Has that happened?
23 THE WITNESS: No.
24 HEARING OFFICER WIANT: Not that particular task, but is
25 it -- is there an example of a task that an -- that an MIC has

1 assigned a associate that is not on that task list?
2 THE WITNESS: Yes.
3 HEARING OFFICER WIANT: What is an example?
4 THE WITNESS: Sometimes we will run out of product, and we
5 will reach out to our sister shop and have an associate walk
6 down and pick up product. They're -- they can do that. Other
7 things is they can clean floors in the walk-in -- like, deep
8 cleaning -- they're more than welcome to, but they'll check in
9 with the MIC or the MIC will delegate those tasks.
10 HEARING OFFICER WIANT: And a shift lead working as an MIC
11 has the -- the capability to delegate those tasks without
12 approval?
13 THE WITNESS: Correct.
14 HEARING OFFICER WIANT: Okay. Are there circumstances
15 where a shift lead is not on duty?
16 THE WITNESS: For instance, a call-out or if they were my
17 MI -- or the shift leader for the night were to call out, yes.
18 HEARING OFFICER WIANT: And so who -- who serves in the
19 shift lead role at that point?
20 THE WITNESS: That's when I would reach out to another
21 shift leader.
22 HEARING OFFICER WIANT: Do shift leaders work the tasks
23 that associates work?
24 THE WITNESS: When they first begin, yes, as an associate,
25 but for the most part -- the most part, they assign those

1 cleaning tasks to the associates.
2 HEARING OFFICER WIANT: So if a shift leader is working
3 with three other associates and -- is the shift leader only
4 delegating all of the tasks to the associates or are they doing
5 some of the tasks themselves?
6 THE WITNESS: So they are allowed in some of the tasks
7 themselves, but they want to make themselves available to the
8 associates as well.
9 HEARING OFFICER WIANT: So I guess -- what percentage of
10 their work -- of the shift leader's work -- is actually making
11 the product rather than just delegating the tasks?
12 THE WITNESS: Like working the line?
13 HEARING OFFICER WIANT: Um-hum.
14 THE WITNESS: If it's during the lunch rush, I would say
15 it's 50/50 -- all hands are in. But if it's like, the dinner
16 rush it's like, the associates are probably 60 percent and the
17 managers are 40 -- or the MIC is 40 percent.
18 HEARING OFFICER WIANT: Working the line?
19 THE WITNESS: Yeah.
20 HEARING OFFICER WIANT: Okay. Give me one moment. If two
21 shift leads are working the same shift, how do you decide who's
22 the MIC between them?
23 THE WITNESS: If one of them's a closing shift lead, then
24 they are the MIC.
25 HEARING OFFICER WIANT: And closing means to work until 9

1 p.m.?

2 THE WITNESS: Correct.

3 HEARING OFFICER WIANT: Okay. And what if there are two

4 shift leads working until 9 p.m. on a day?

5 THE WITNESS: They are welcome to choose who would like to

6 be the MIC; it is their call.

7 HEARING OFFICER WIANT: So the shift leads can determine

8 who's going to be the MIC that day?

9 THE WITNESS: Correct.

10 HEARING OFFICER WIANT: We talked briefly about how shift

11 leads are able to send people home, correct?

12 THE WITNESS: Correct.

13 HEARING OFFICER WIANT: And they can send people home,

14 either maybe for a behavioral issue or also if the store is

15 slow that day?

16 THE WITNESS: Correct.

17 HEARING OFFICER WIANT: And is there a threshold of

18 slowness that a shift lead would have to see in order to send

19 somebody home?

20 THE WITNESS: We like to have them wait a certain period.

21 Like, if it's close to their dinner rush, I would wait until

22 after the dinner rush, but that is also their decision. If

23 they want to send them home earlier before the dinner rush that

24 is their call.

25 HEARING OFFICER WIANT: Do shift leads typically send

1 people home when it is slow?
2 THE WITNESS: If it's the closing shifts, for the most
3 part, they stay with their three -- the two associates and the
4 MIC.
5 HEARING OFFICER WIANT: So it's not typical?
6 THE WITNESS: No.
7 HEARING OFFICER WIANT: Have there been circumstances
8 where a shift lead has sent somebody home when they shouldn't
9 have sent somebody home?
10 THE WITNESS: Yes.
11 HEARING OFFICER WIANT: And are the shift leads
12 responsible for that mistake?
13 THE WITNESS: Correct.
14 HEARING OFFICER WIANT: Are they held accountable in terms
15 of potential coaching or discipline?
16 THE WITNESS: Correct.
17 HEARING OFFICER WIANT: Are shift leads held accountable
18 for not sending somebody home when there -- when it was
19 particularly slow and they should have?
20 THE WITNESS: Correct.
21 HEARING OFFICER WIANT: And so there is a threshold if --
22 that you have so few folks coming -- so few foot traffic or
23 sales -- that shift leads are responsible for sending somebody
24 home?
25 THE WITNESS: Correct.

1 HEARING OFFICER WIANT: And what is that threshold?
2 THE WITNESS: That is they watch their labor variance on
3 the POS system.
4 HEARING OFFICER WIANT: Okay. So they're able to track
5 the -- the labor variance and determine that if they hit --
6 if -- if you hit a certain number then they should be sending
7 somebody home?
8 THE WITNESS: Correct.
9 HEARING OFFICER WIANT: So it's less their discretion and
10 more of a policy that is in place?
11 THE WITNESS: It's not so much a policy. It's depending
12 on the sales and the foot traffic.
13 HEARING OFFICER WIANT: Okay. It's like a practice at the
14 store?
15 THE WITNESS: Correct.
16 HEARING OFFICER WIANT: Okay. If there is a high volume
17 of sales and a high volume of foot traffic, does the shift lead
18 have discretion to send somebody home just because they want
19 to?
20 THE WITNESS: They shouldn't but it's their call.
21 HEARING OFFICER WIANT: When you say they shouldn't, does
22 that mean that they could possibly be reprimanded for sending
23 somebody home because they're not doing what they're supposed
24 to be doing?
25 THE WITNESS: So they can send someone home, but it's

1 their call. They could get hit heavily after they send someone
2 home. But it's their call. I will see it in the morning.
3 Like, for instance, if their closing wasn't done correctly then
4 we know something must've gone wrong. And then that's when I
5 touch base.
6 HEARING OFFICER WIANT: So there are certain parameters
7 that allow for sending people home versus parameters that --
8 where you shouldn't send people home? Okay.
9 Do shift leaders, when they're not acting in an MIC
10 capacity, give feedback to the associates on their performance?
11 THE WITNESS: Correct.
12 HEARING OFFICER WIANT: And is that different feedback
13 than a shift leader acting in an MIC capacity that they would
14 provide to associates on their performance?
15 THE WITNESS: They're both welcome to give fref --
16 feedback.
17 HEARING OFFICER WIANT: Do you have examples of times and
18 for what purpose that a employee was provided a reward for
19 their good performance?
20 THE WITNESS: I myself, no -- the shop probably isn't a
21 good example -- but I have treated my shop to Starbucks before.
22 That's a reward for the whole team. Or I will just provide
23 Starbucks or a manager comp meal for that particular associate.
24 HEARING OFFICER WIANT: And that's in your current role?
25 THE WITNESS: Yes.

1 HEARING OFFICER WIANT: And so how about -- I think it was
2 two years ago you were a shift lead; is that right? Do you
3 recall giving a reward to employees as a shift lead?
4 THE WITNESS: Yes.
5 HEARING OFFICER WIANT: And do you have an example of why
6 those were provided and what the reward was?
7 THE WITNESS: Yes. I had a call-out on one of my closing
8 shifts, and I had reached out to my morning prepper, who had
9 availability again in the same shift. And he was more than
10 welcome to come out and help, so I gave them -- the employee --
11 an appreciation -- a cash reward.
12 HEARING OFFICER WIANT: And is there a cap of a cash
13 reward?
14 THE WITNESS: Like amount?
15 HEARING OFFICER WIANT: Um-hum.
16 THE WITNESS: For him it was 25.
17 HEARING OFFICER WIANT: Is there currently a cap that you
18 allow your shift leaders to provide cash to employees?
19 THE WITNESS: I try to keep it under 20.
20 HEARING OFFICER WIANT: Um-hum. Okay.
21 THE WITNESS: But there is no set amount as far as I know.
22 HEARING OFFICER WIANT: Do you have, like, a budget line
23 item for the amount?
24 THE WITNESS: I encourage them to stay under the 20 if
25 they do.

1 HEARING OFFICER WIANT: And is there any tracking of who
2 has acted in the MIC capacity on any given day -- like, do you
3 keep track of that over the course of time?
4 THE WITNESS: So from our OpsAnalitica, which is the
5 checklist -- whoever fills that out, you can see who the MIC
6 was. But again, there's two -- there's the morning and then
7 there's the closing MIC.
8 HEARING OFFICER WIANT: Okay. So when a shift lead is
9 working as an MIC is anybody else able to give associates --
10 assign them to duties or tasks?
11 THE WITNESS: Just the MIC.
12 HEARING OFFICER WIANT: Okay. So if the shift lead is
13 working as an MIC, you, even if you are working, you can't come
14 out and assign an associate tasks?
15 THE WITNESS: If we are working the same shift, I hand it
16 off to the shift leader; it's their shift.
17 HEARING OFFICER WIANT: Okay. I think that is all. Mr.
18 Abraham, do you have any follow-up questions from my long
19 series of questions?
20 MR. ABRAHAM: I don't have any questions at -- well, I --
21 I do have some questions around one topic.
22 HEARING OFFICER WIANT: Um-hum.
23 MR. ABRAHAM: We'll see how many. Probably, not -- not
24 many.
25 Q BY MR. ABRAHAM: When the hearing officer was talking to

1 you about parameters to send somebody home, does the shift
2 leader who's working as the MIC still have the discretion to go
3 outside those parameters?
4 A No.
5 Q So how would they -- when -- and when we say "parameters"
6 if the shift leader thinks, okay, I know it's slow now, but I
7 can see out there across at the park that there's going to be a
8 lot of people coming in, so I'm going to be outside parameters
9 for a while until those people get down to the concert. Is
10 that permissible?
11 A Yeah.
12 Q So there are circumstances where the shift leader can
13 exercise their independent judgment to stay outside the
14 staffing parameters for a period of time?
15 A Correct.
16 MR. ABRAHAM: No further questions.
17 HEARING OFFICER WIANT: Okay. That is all I have for you,
18 Mimi. Thank you so much for your time. You may step off of
19 the stand.
20 MR. ABRAHAM: You -- you know what. Actually, I'm going
21 to call her back if I need to call her back. I do want to
22 address one other topic here, if I may.
23 Q BY MR. ABRAHAM: There's been some discussion about --
24 there's three shift leads right now on the roster, correct?
25 A Correct.

1 Q And there's been some discussion about the limited role of
2 Sam Lawson serving as MIC, correct?
3 A Correct.
4 Q Are there unusual circumstances surrounding why Sam Lawson
5 is not assigned as an MIC?
6 A His limited schedule.
7 MR. ABRAHAM: No further questions.
8 HEARING OFFICER WIANT: Okay. You may step off the stand,
9 Mimi. Thank you so much. Please stay around in case we need
10 to recall you. I appreciate it. We can go off the record.
11 (Off the record at 1:51 p.m.)
12 HEARING OFFICER WIANT: We're back on the record after,
13 again, just a little break.
14 Mr. Abraham, what is the Employer's final position
15 regarding issues the issues in this hearing?
16 MR. ABRAHAM: The classifications -- the shift leader
17 classification as a group perform supervisory functions is
18 defined by section 2(a) of the National Labor Relations Act,
19 and should be excluded from the petition for unit.
20 HEARING OFFICER WIANT: Wonderful. Are there any other
21 outstanding stipulations that we can agree to hear, i.e. voting
22 subject to challenge these three individuals?
23 MR. ABRAHAM: I -- I think we'll -- that's why we had our
24 hearing today, candidly.
25 HEARING OFFICER WIANT: Perfect. Now, I'd like to explore

1 the election details in the event an election is directed. If
2 an election is directed, it will be scheduled at the earliest
3 date practicable.
4 Both parties have asserted that they have a preference for
5 a manual election. Is that true?
6 MR. ABRAHAM: From the Employer, yes.
7 MR. MEDINA: From the Union, yes.
8 HEARING OFFICER WIANT: Wonderful. Can the Employer meet
9 the obligations set out in Memo GC-2010, and the Aspire Q in
10 all factors, Mr. Abraham?
11 MR. ABRAHAM: Yes.
12 HEARING OFFICER WIANT: And will the Employer provide a
13 full explanation of such factors in its brief?
14 MR. MEDINA: Yes.
15 HEARING OFFICER WIANT: And if an election is directed, do
16 the party -- or does any party who is entitled to receive a
17 voter lists wish -- and that would be the Petitioner in this
18 case, wish to waive the ten-day requirement with said list, Mr.
19 Medina?
20 MR. MEDINA: Sorry. Can you repeat that? I was having
21 trouble hearing you.
22 HEARING OFFICER WIANT: Not a problem. The Petitioner is
23 entitled for ten days with the list prior to any sort of
24 election. Would the Petitioner like to waive any portion of
25 that ten days?

1 MR. MEDINA: No.

2 HEARING OFFICER WIANT: Okay. Does either party perceive
3 an impediment for conducting an election if an election is
4 directed between February 15th, and July 1st of 2023?

5 MR. ABRAHAM: From the Employer, not at this time.

6 HEARING OFFICER WIANT: From the Petitioner?

7 MR. MEDINA: Not at this time.

8 HEARING OFFICER WIANT: Let's explore the time, date, and
9 manner. Mr. Abraham, What is the Employer's position
10 concerning the method of election, appropriate days of the
11 week, and times and locations?

12 MR. ABRAHAM: We would assume for days, Thursdays would be
13 our preferred days. Time of the day, between 3 p.m. and 6 p.m.
14 is our preferred window. And if we want to talk about, kind
15 of, voter eligibility, I would just say the standard Board
16 formula should be applied. I see no special circumstances
17 under the present in this case.

18 HEARING OFFICER WIANT: Do you know the most recent
19 payroll ending date?

20 MR. ABRAHAM: I know on our petition we said it with
21 respect to the sequence. And so I can -- we can address that
22 in our brief, or one could take the time to look at a calendar.
23 I don't mean to be flippant about it. I'm sorry.

24 HEARING OFFICER WIANT: Now, Mr. Abraham, can you confirm
25 that the most recent payroll eligibility date, as well as the

1 frequency of such payroll eligibility dates, are indeed on the
2 SOP?
3 MR. ABRAHAM: Yes, I can confirm that their biweekly, and
4 one payroll ending date was January 8th, of 2023.
5 HEARING OFFICER WIANT: Perfect. Thank you so much.
6 Are there any other factors the Regional Director should
7 be aware of before scheduling an election at the earliest
8 practicable date?
9 Hearing none. Does either party anticipate the need for
10 the notice of election in ballots to be translated?
11 MR. ABRAHAM: Yes. Just like the notice of election that
12 was filed, we would ask that it be translated into Spanish, as
13 well as provided in English.
14 HEARING OFFICER WIANT: Does the Union -- the Union agree
15 with this?
16 MR. MEDINA: Yeah, that's fine.
17 HEARING OFFICER WIANT: And Petitioner, if the RD does
18 determine in an appropriate unit other than the unit that has
19 been described in your petition, is the Petitioner still
20 willing to proceed with such an election, Mr. Medina?
21 MR. MEDINA: Sorry. Yeah.
22 HEARING OFFICER WIANT: Do you want me to repeat? Okay.
23 MR. MEDINA: Yes.
24 HEARING OFFICER WIANT: Yes, they are willing to proceed?
25 Okay.

1 Mr. Abraham, is there a name, address, email address, or
2 telephone number of the Employer's on-site representative whom
3 the Regional Director should transmit the notice of election
4 to, if an election is indeed directed?
5 MR. ABRAHAM: Yeah, it's a little hard to hear, as much as
6 I love the song, "Stand By Me" -- there we go. Yeah, it's Mike
7 Narramore. The last name is sp -- common spelling of Mike,
8 N-A-R-R-A-M-O-R-E. And Mr. Narramore's email address is Mike,
9 M-I-K-E dot Narramore, N-A-R-R-A-M-O-R-E, @potbelly.com. And
10 you need his physical mailing address or phone number? I
11 forget --
12 HEARING OFFICER WIANT: Is the mailing address the same as
13 the store address?
14 MR. ABRAHAM: No. The mailing address will be the
15 corporate office, which is -- I can give you that address,
16 which is also identified in all of the closing checklist that's
17 Employer Exhibit 5, 6, and 7, which is 111 North Canal,
18 C-A-N-A-L Street, Suite 325 in Chicago, Illinois 60606.
19 HEARING OFFICER WIANT: Thank you. And telephone number?
20 MR. ABRAHAM: The telephone number for Mr. Narramore is
21 (817) 917-6344.
22 HEARING OFFICER WIANT: Thank you. The Regional Director
23 will issue a decision in this matter as soon as practicable,
24 and will immediately transmit the documents to the parties and
25 their designated representatives by email, facsimile, or

1 overnight email if neither email nor facsimile number is
2 provided.
3 Prior to the hearing, the parties were provided with Form
4 NLRB 550, or 5580, description of voter list requirements after
5 hearing and certification and decertification cases, which
6 explains the Employer's obligation to furnish the voter lists
7 should an election be directed in this matter. The document
8 has been marked for identification as Board Exhibit 4.
9 Are there any objections to the receipt of Board Exhibit
10 4? Employer?
11 MR. ABRAHAM: No.
12 HEARING OFFICER WIANT: Petitioner?
13 MR. MEDINA: No.
14 HEARING OFFICER WIANT: Hearing no -- no objection, Board
15 Exhibit 4 is received into the record.
16 **(Board Exhibit Number 4 Received into Evidence)**
17 HEARING OFFICER WIANT: Any party is entitled to hear --
18 well, here the Employer is entitled to a reasonable period at
19 the end of the hearing for an oral argument.
20 Does the Employer wish to make such an oral argument now?
21 MR. ABRAHAM: No. The Employer would defer to its post-
22 hearing brief.
23 HEARING OFFICER WIANT: Any party that is desiring to
24 submit a brief to the Regional Director shall be entitled to do
25 so within five business days of the close of the hearing.

1 Given that the Union was indeed precluded from making arguments
2 here, while they are able to submit a brief, the Regional
3 Director will wait that brief, and give it the weight that it
4 deserves as he sees fit.
5 Copies of such briefs shall be served on all parties to
6 the proceeding, and the statement of such services shall be
7 filed with the Regional Director together with that brief. No
8 brief, or no reply brief may be filed except upon special
9 permission by the Regional Director.
10 Do either parties wish to waive the filing of the briefs?
11 MR. ABRAHAM: The Employer intends to submit a post-
12 hearing brief, and I will have to explore further the impact of
13 the preclusion rule on the statement that the authority missing
14 that gets to Smith argument, because that seems to be
15 contradictory to the regulation.
16 HEARING OFFICER WIANT: Again, the Regional Director will
17 make a determination, as any submittal should be seen.
18 Do either party, particularly the Employer, wish to
19 request an extension of such brief?
20 MR. ABRAHAM: We -- we do in light of the transcript
21 that's coming, we would ask for the brief to be submitted at
22 least five business days after receipt of the brief -- or the
23 transcript.
24 HEARING OFFICER WIANT: So if it could be received on, I
25 think, the latest Bruce said three days. So if it was received

1 on the 7th, then five business days would be February 14th. Is
2 that a correct request?
3 MR. ABRAHAM: That would be correct.
4 HEARING OFFICER WIANT: Okay. I am able to grant until
5 February 14th. Briefs shall be due on February 14th.
6 The parties that I remind -- are reminded that pursuant to
7 section 102.5 of the rules -- of the Board's rules and
8 regulations, briefs and other case documents must be filed by
9 electronic submission, e-Filing, through the Agency's website,
10 www.nlrb.gov. Unless the party filing the document does not
11 have access to the means for filing electronically, or filing
12 electronically would impose an undue burden.
13 Briefs or other documents filed by other means other than
14 e-Filing must be accompanied by a statement explaining why
15 filing -- why the filing party does not have access to the
16 means for filing electronically, or filing electronically would
17 impose an undue burden.
18 Filing a brief and other documents electronically may be
19 accompanied, or may be accomplished by using the e-Filing
20 system on the Agency's website at www.nlrb.gov. Once the
21 website is accessed, click on e-Filing documents, enter the
22 NLRB case number, and follow the detailed instructions.
23 The responsibility for the receipt of the document rests
24 exclusively on the sender. A failure to timely file a brief
25 will not be excused on the basis that the transmission could

1 not be accomplished because the Agency's website was off-line
2 or unavailable for some reason, absent a determination of
3 technical failures of the site, and with notice of such posted
4 on the website.
5 The parties are reminded that they should request an
6 expedited copy of the transcript from the court reporter.
7 Is there anything else?
8 MR. ABRAHAM: Nothing from the Employer.
9 MR. MEDINA: Nothing from the Union.
10 HEARING OFFICER WIANT: If there's nothing further, the
11 hearing will be closed.
12 The hearing is now closed.
13 **(Whereupon, the hearing in the above-entitled matter was closed**
14 **at 2:13 p.m.)**
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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 19, Subregion 36, Case Number 19-RC-310218,
5 Potbelly Sandwich Works, LLC and Restaurant Workers of
6 Portland, held at the National Labor Relations Board, Region
7 19, Subregion 36, Green-Wyatt Federal Building, 1220 SW, 3rd
8 Avenue, Suite 605, , Portland, OR 97204, on February 2, 2023,
9 at 10:22 a.m. was held according to the record, and that this
10 is the original, complete, and true and accurate transcript
11 that has been compared to the reporting or recording,
12 accomplished at the hearing, that the exhibit files have been
13 checked for completeness and no exhibits received in evidence
14 or in the rejected exhibit files are missing.
15
16
17
18 BRUCE CARLSON
19 Official Reporter
20
21
22
23
24
25

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 19, SUBREGION 36

In the Matter of:

POTBELLY SANDWICH WORKS, LLC, Case No. 19-RC-310218

Employer,

and

RESTAURANT WORKERS OF PORTLAND,

Petitioner.

BOARD EXHIBITS

Place: Portland, Oregon (via Zoom Videoconference)

Dates: February 2, 2023

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 19

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

INDEX & DESCRIPTION OF FORMAL DOCUMENTS

Board Exhibit No.	1(a)	RC Petition filed 1-12-23.
	1(b)	Notice of Representation Hearing issued 1-12-23.
	1(c)	Affidavit of Service of 1(b) dated 1-12-23.
	1(d)	Order Changing Time of Hearing issued 1-31-23.
	1(e)	Affidavit of Service of 1(d) dated 1-31-23.
	1(f)	Index & Description of Formal Documents.

Bd. Exh. No. 1(f)

EXHIBIT NO. B1(f) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

AFFIDAVIT OF SERVICE OF: Order Changing Time of Hearing, dated January 31, 2023.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 31, 2023**,** I served the above-entitled document(s) by **e-service** upon the following persons, addressed to them at the following addresses:

Mike Narramore, HR Representative
Miriam Arteaga Ochoa, General Manager
Potbelly Sandwich Shop
802 SW 6th Ave.
Portland, OR 97204
mike.narramore@potbelly.com

Mark Medina, Organizer
Restaurant Workers of Portland
2249 E Burnside St.
Portland, OR 97214
503rwp@gmail.com

Kyle T. Abraham, Attorney
Ogletree Deakins Nash Smoak &
Stewart, PLLC
222 SW Columbia St., Ste. 1500
Portland, OR 97201-6641
kyle.abraham@ogletree.com

January 31, 2023
Date

Kristy Kennedy
Designated Agent of NLRB
Name

Kristy Kennedy
Signature

Bd. Exh. No. 1(e)

EXHIBIT NO. B1(e) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

POTBELLY SANDWICH SHOP

Employer

and **Case 19-RC-310218**

RESTAURANT WORKERS OF PORTLAND

Petitioner

ORDER CHANGING TIME OF HEARING

IT IS HEREBY ORDERED that the time of the hearing in the above-entitled matter scheduled to be held on February 2, 2023, and consecutive days thereafter by way of video hearing or teleconference (Zoom) is changed from 9:00 AM to 10:00 AM.

Dated at Portland, Oregon this 31st day of January, 2023.

RONALD K. HOOKS
Regional Director

By: _____
Jessica Dietz, Officer in Charge
NLRB, Subregion 36
Green-Wyatt Federal Building
1220 SW 3rd Avenue, Suite 605
Portland, OR 97204

Bd. Exh. No. 1(d)

EXHIBIT NO. B1(d) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

AFFIDAVIT OF SERVICE OF: Petition dated January 12, 2023**, Notice of Representation Hearing dated** January 12, 2023**, 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 12, 2023, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

mike.narramore@potbelly.com
Miriam Arteaga Ochoa, General Manager
Mike Narramore, HR Representative
Potbelly Sandwich Shop
802 SW 6th Ave.
Portland, OR 97204

503RWP@gmail.com
Mark Medina, Organizer
Restaurant Workers of Portland
2249 E. Burnside St.
Portland, OR 97214

January 12, 2023	Kristy Kennedy Designated Agent of NLRB
Date	Name

Kristy Kennedy
Signature

Bd. Exh. No. 1(c)

EXHIBIT NO. B1(c) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

POTBELLY SANDWICH SHOP **Employer** **and** **RESTAURANT WORKERS OF PORTLAND** **Petitioner**	**Case 19-RC-310218**

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 9:00 AM on **Thursday, February 2, 2023** and on consecutive days thereafter until concluded, by way of video hearing or teleconference (Zoom), 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, Potbelly Sandwich Shop 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** Pacific time on January 25, 2023**.** Following timely filing and service of a Statement of Position by Potbelly Sandwich Shop, 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** Pacific on January 30, 2023.

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

Bd. Exh. No. 1(b)

EXHIBIT NO. B1(b) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 3 DATE: 2/2/23 REPORTER: BC

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Pacific 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 12, 2023

RONALD K. HOOKS
Regional Director

By: _____
Jessica Dietz, Officer in Charge
NLRB, Subregion 36
Green-Wyatt Federal Building
1220 SW 3rd Avenue, Suite 605
Portland, OR 97204

FORM NLRB-502 (RC)
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 19-RC-310218	Date Filed 1/12/2023

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 representative 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: Potbelly Sandwich Shop	2b. Address(es) of Establishment(s) involved *(Street and number, City, State, ZIP code)*: 802 SW 6th Ave Portland OR 97204
3a. Employer Representative - Name and Title: Miriam Arteaga Ochoa, General Manager Mike Narramore, HR Representative	3b. Address *(if same as 2b - state same)*: Same

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
971-202-5015	541-212-9802		mike.narramore@potbelly.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc.)*	4b. Principal Product or Service	5a. City and State where unit is located:
Restaurant	Food service	Portland, OR

5b. Description of Unit Involved: **Included:** Full time and part time employees including shift leads. **Excluded:** Supervisors, managers, and guards.	6a. Number of Employees in Unit: 13 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? ☒ Yes ☐ No

Check One: ☒ 7a. Request for recognition as Bargaining Representative was made on (Date) 1/11/2023 and Employer declined recognition on or about (Date) _____ (If no reply received, so state).
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

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

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

11. Election Details: If the NLRB conducts and 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):
02/13/2023	3pm-5pm	Back Room

12a. Full Name of Petitioner *(including local name and number)*: Restauraunt Workers of Portland	12b. Address *(street and number, city, State and ZIP code)*: 2249 E Burnside St. Portland, OR 97214

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

12d. Tel. No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
	971-239-3606		503RWP@gmail.com

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

13a. Name and Title: Mark Medina, Organizer	13b. Address *(street and number, city, State and ZIP code)*: 2249 E Burnside St. Portland, OR 97214

13c. Tel. No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address
	971-239-3606		503RWP@gmail.com

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
Mark Medina		Organizer	01/11/23

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 may cause the NLRB to decline to invoke its processes.

Bd. Exh. No. 1(a)

EXHIBIT NO. B1(a) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 3 DATE: 2/2/23 REPORTER: BC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

Potbelly Sandwich Works, LLC
Employer

Case 19-RC-310218

Restaurant Workers of Portland
Petitioner

STIPULATION

The parties in this matter stipulate and agree that:

1. We have been informed of the procedures at formal hearings before the National Labor Relations Board by service of a Description of Procedures in Certification and Decertification Cases. The Hearing Officer has offered to us additional copies of the Description of Procedures.

2. To the extent the formal documents in this proceeding do not correctly reflect the names of the parties, the parties hereby make a joint motion to the Regional Director to amend the petition and other formal documents to correctly reflect the names as set forth above.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

4. The Petitioner claims to represent the employees in the unit described in the petition herein and the Employer declines to recognize the Petitioner.

5. There is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein and there is no contract bar or other bar to an election in this matter.

6. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

Commerce facts are as follows:

The Employer, Potbelly Sandwich Works, LLC, a State of Illinois limited liability company, is engaged in the business of operating a restaurant located at 802 SW 6th Avenue, Portland, Oregon. During the last fiscal year, a representative period, the Employer in the conduct of its operations derived gross annual revenues in excess of $500,000. During the same period, the Employer purchased and received goods,

Board Exhibit 2

EXHIBIT NO. B2 RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 3 DATE: 2/2/23 REPORTER: BC

supplies, and materials valued in excess of $50,000 directly from points located outside the State of Oregon.

7. Any unit found appropriate by the Regional Director should include the following classifications and exclude the following classifications. The parties do not agree whether the Shift Leader classification does, or does not, have supervisory authority within the meaning of Section 2(11) of the Act.

Included: All full-time and regular part-time associates and certified trainers employed by the Employer at its store located at 802 SW 6th Avenue, Portland, Oregon.

Excluded: All managerial employees, and guards and supervisors as defined by the Act.

Upon receipt of this Stipulation by the Hearing Officer it may be admitted, without objection, as a Board exhibit in this proceeding.

/s/Kyle Abraham	/s/Mark Medina
For the Employer	For the Petitioner

RECEIVED:

/s/Emily Wiant	February 2, 2023
Hearing Officer	Date

Board Exhibit No. 2

FORM NLRB-505
(4-15)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

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. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e* below.

1a. Full name of party filing Statement of Position:	1c. Business Phone:	1e. Fax No.:
Potbelly Sandwich Shop	971.202.5015	
1b. Address *(Street and number, city, state, and ZIP code):*	1d. Cell No.:	1f. e-Mail Address:
802 SW 6th Ave., Portland, OR 97204	614.881.1046	Adam.Bennett@potbelly.com

2. Do you agree that the NLRB has jurisdiction over the Employer in this case? [x] 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 [x] 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.)*

The Shift Leader classification, as a group, must be excluded because the group includes Section 2 (11) supervisors within the meaning of the National Labor Relations Act ("Act").

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:
N/A	Shift Leaders

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

N/A

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

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

The Shift Leader classification, as a group, includes 2(11) supervisors within the meaning of the Act, and the number of supervisors in the petitioned-for unit requires a pre-election hearing.

7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015
(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: [x] Manual [ ] Mail [ ] Mixed Manual/Mail

8b. Date(s):	8c. Time(s):	8d. Location(s):
Thursday, March 9, 2023	3:00 PM to 6:00 PM	TBD during the hearing
8e. Eligibility Period (e.g. special elig bility formula):	8f. Last Payroll Period Ending Date:	8g. Length of payroll period
standard eligibility	January 8, 2023	[ ] Weekly [x] 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
Kyle T. Abraham		1.25.23
9d. Address *(Street and number, city, state, and ZIP code)*		9e. e-Mail Address
222 SW Columbia St., Ste 1500 Portland, OR 97205		kyle.abraham@ogletreedeakins.com
9f. Business Phone No.:	9g. Fax No.:	9h. Cell No.:
503.552.2140	503.224.4518	503.302.3298

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.

Board Exhibit 3

EXHIBIT NO. B3 RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 6 DATE: 2/2/23 REPORTER: BC

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2023 a true and correct copy of the foregoing Statement of Position was served via email on the following:

Mark Medina
Organizer
Restaurant Workers of Portland
2249 E. Burnside Street
Portland, OR 97214
503RWP@gmail.com

Kyle T. Abraham

INITIAL LIST (Filed with Statement of Position)

Employer Name: Potbelly Sandwich Shop **Case No. 19-RC-310218**

Attachment B: Employees in Petitioned-for Unit

Employee Name	Work Location	Shift	Job Classification
1. (b) (6), (b) (7)(C)	**Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204**	(b) (6), (b) (7)(C)	
2.	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
3.	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
4.	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
5.	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
6.	**Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204**		
7.	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
8.	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
9.	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
10	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
11	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		
12	**Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204**		
13	Potbelly Sandwich Shop, 802 SW 6th Ave., Portland, OR 97204		

[1] The Employer's position is the Shift Leader classification, as a group, includes Section 2 (11) supervisors and the group must be excluded.

[2] The Employer's position is the Shift Leader classification, as a group, includes Section 2 (11) supervisors and the group must be excluded.

[3] The Employer's position is the Shift Leader classification, as a group, includes Section 2 (11) supervisors and the group must be excluded.

Employer Name: **Potbelly Sandwich Shop** **Case No.** **19-RC-310218**

Attachment C: Employees to be Added to Petitioned-for Unit **N/A**

Attachment D: Names of Employees to be Excluded from Petitioned-for Unit

Employee Name	
1.	(b) (6), (b) (7)(C)
2.	[redacted]
3.	[redacted]

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
Potbelly Sandwich Shop and Restaurant Workers of Portland	19-RC-310218

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

Potbelly Sandwich Works, LLC

2. TYPE OF ENTITY

☐ CORPORATION ☒ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER *(Specify)*

3. IF A CORPORATION OR LLC

A. STATE OF INCORPORATION OR FORMATION: Illinois

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES: Potbelly Corporation (parent) 111 N. Canal St., Suite 325, Chicago, IL 60606

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

Potbelly Corporation, 111 N. Canal Street, Suite 325, Chicago, IL 60606

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

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

The company sells toasted sub style sandwiches, salads, and shakes.

7A. PRINCIPAL LOCATION	7B. BRANCH LOCATIONS
Chicago, IL	397

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL: 6100

B. AT THE ADDRESS INVOLVED IN THIS MATTER: 16

9. DURING THE MOST RECENT *(Check the appropriate box)*: ☐ CALENDAR ☐ 12 MONTHS or ☒ FISCAL YEAR FY DATES 12/27/2021 - 12/26/2022

	YES	NO
A. Did you **provide services** valued in excess of $50,000 directly to customers outside your State? If no, indicate actual value.		X
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.		X
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.		X
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.	X	
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.	X	
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.	X	
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:		X

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYEE 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
Adiya Dixon-Wiggins	SVP, Chief Legal Officer	adiya.dixon@potbelly.com	(646)831-7875

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE	SIGNATURE	E-MAIL ADDRESS	DATE
Adam R. Bennett, Associate General Counsel		adam.bennett@potbelly.com	1/24/2023

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.

FORM NLRB-5580
(6-20)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF VOTER LIST REQUIREMENT AFTER HEARING IN CERTIFICATION AND DECERTIFICATION CASES

If an election is directed, the employer must provide the voter list. To be timely filed and served, the voter list must be *received* by the Regional Director and the parties named in the Decision and Direction of Election within 2 business days after the issuance of the Decision unless a longer period, based on extraordinary circumstances, is specified in the Decision and Direction of Election. A certificate of service on all parties must be filed with the Regional Director when the voter list is filed. The region will not serve the voter list.

List Contents - The list must include 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 all eligible voters). The Employer must also include in separate sections of that list the same information for those individuals the parties have agreed will be permitted to vote subject to challenge or those individuals who, according to the Decision and Direction of Election, will be permitted to vote subject to challenge.

List Format - The list must be in an electronic format approved by the General Counsel, unless the Employer certifies that it does not have the capacity to produce the list in the required format. Accordingly, 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. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at: **www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.

It may be appropriate for the Employer to produce multiple versions of the list where the data required is kept in separate databases or files so long as all of the lists link the information to the same employees, using the same names, in the same order and are provided within the allotted time. If the Employer provides multiple lists, the list used at the election will be the list containing the employees' names and addresses.

Filing of the List - The voter list must be filed electronically by submitting (E-Filing) it through the Agency's website (**www.nlrb.gov**), unless the Employer provides a written statement explaining why electronic submission is not possible or feasible. The Employer must also electronically serve the list on the other parties. To file electronically, go to **www.nlrb.gov**, click on *E-File Case Documents*, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list is on the sending party. If you have questions about the submission, please promptly contact the Board agent investigating the petition.

Service of the List - The list must be served on the parties named in the Decision and Direction of Election within 2 business days after issuance of the Decision, unless another date has been specified. 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 Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

The parties are not allowed to use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Board Exhibit 4

EXHIBIT NO. B4 RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 19, SUBREGION 36

In the Matter of:

POTBELLY SANDWICH WORKS, LLC, Case No. 19-RC-310218

Employer,

and

RESTAURANT WORKERS OF PORTLAND,

Petitioner.

EMPLOYER EXHIBITS

Place: Portland, Oregon (via Zoom Videoconference)

Dates: February 2, 2023

OFFICIAL REPORTERS
eScribers, LLC
E-Reporting and E-Transcription
7227 North 16th Street, Suite 207
Phoenix, AZ 85020
(602) 263-0885

Shop Name	First Name	Last Name	Job Title
6th & Yamhill	(b) (6), (b) (7)(C)		
6th & Yamhill			
6th & Yamhill			
6th & Yamhill			
6th & Yamhill			
6th & Yamhill			
6th & Yamhill			
6th & Yamhill			
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6th & Yamhill			
6th & Yamhill			

EXHIBIT NO. E1 RECEIVED x REJECTED _____

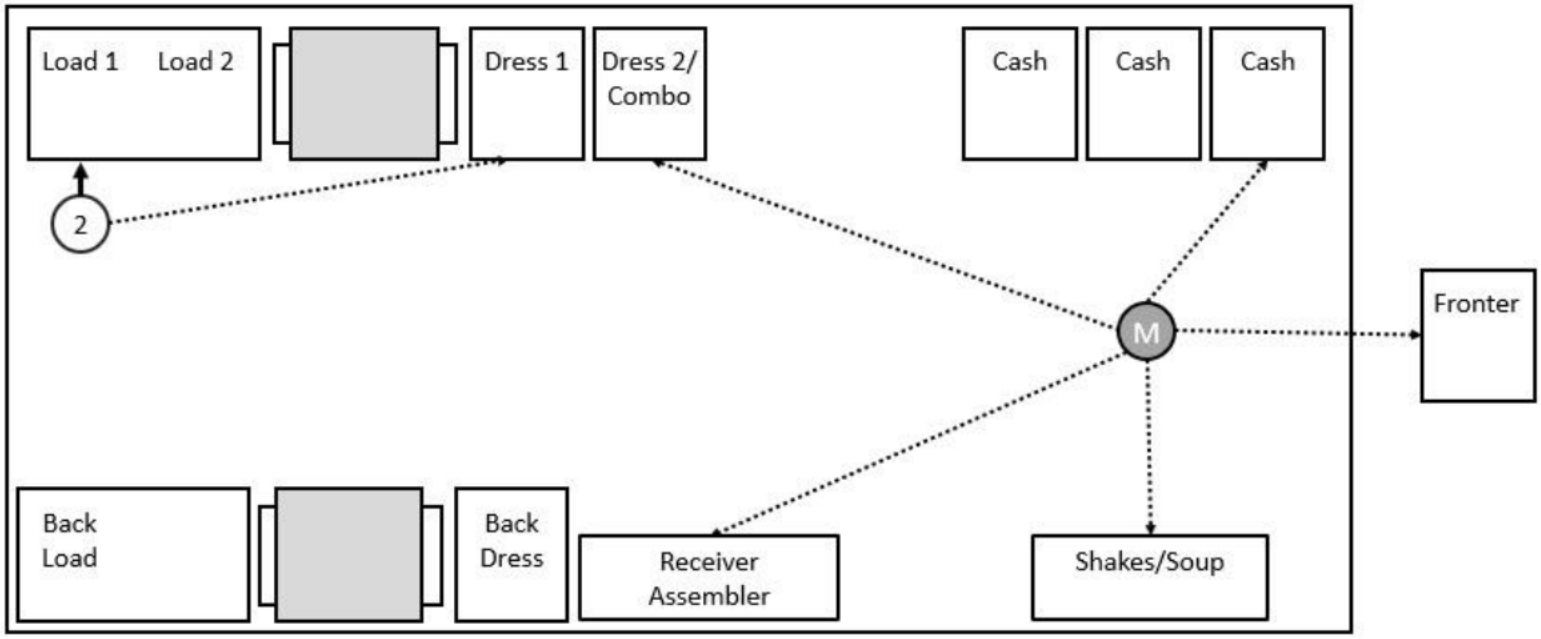
CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

NON-DRIVE THRU SHOPS – 2

(minimum staffing from open – 30 min prior to close. all orders made on frontline)

KEY:
- = Associate
- = MIC
- = Associate locked into position
- = Secondary Leader
- = Primary position
- = Secondary position(s)
- = Headset



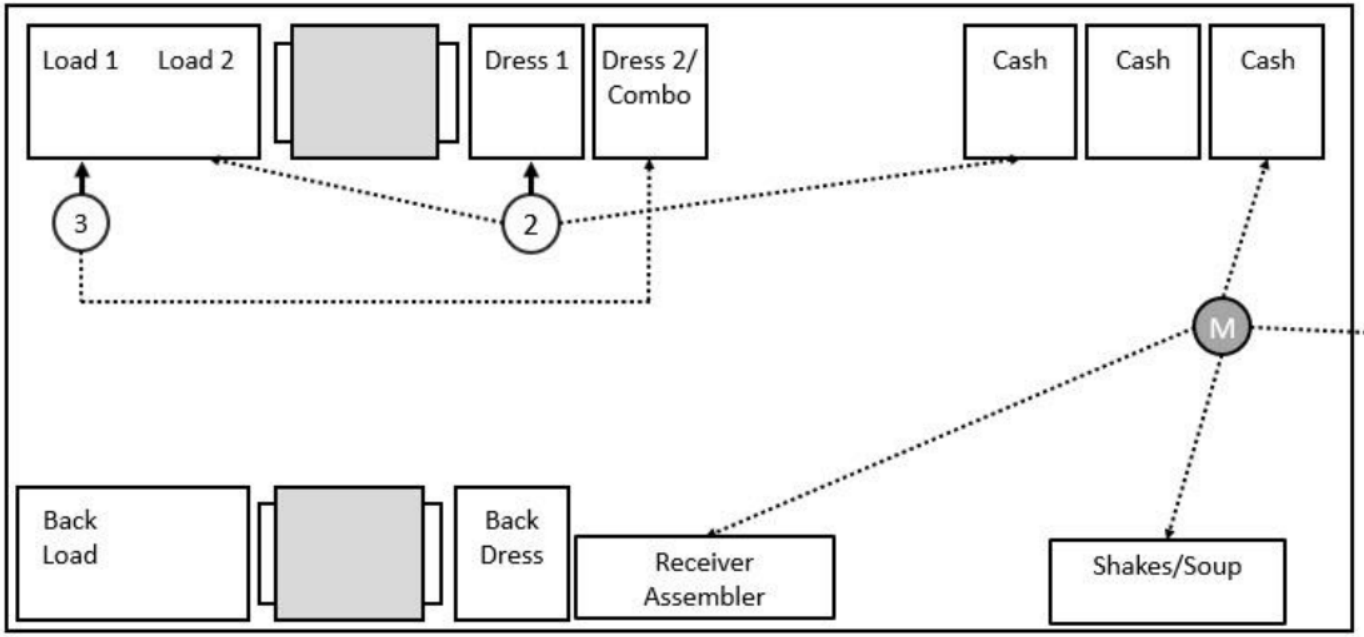
# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash - Dress 2 - Receiver Assembler - Shakes/Soups - Fronter
2		/		Load 1	Dress 1

EXHIBIT NO. B1(a) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 3 DATE: 2/2/23 REPORTER: BC

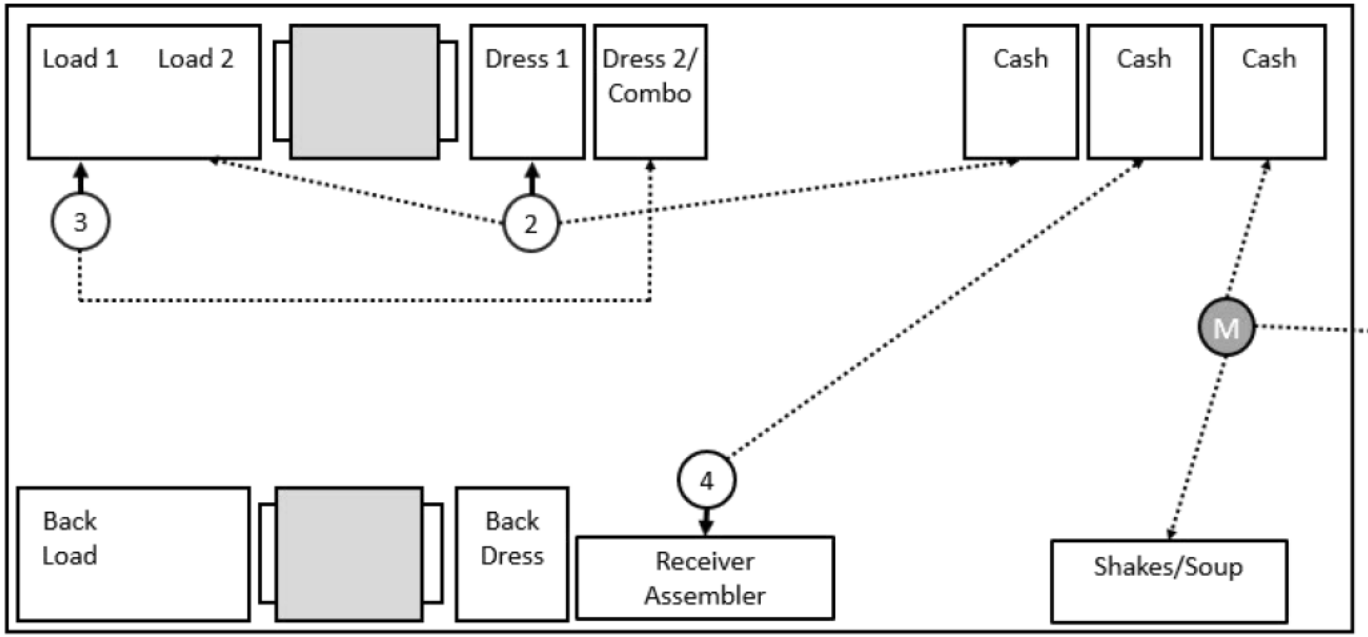
NON-DRIVE THRU SHOPS – 3 (all orders made on frontline)



KEY:
- = Associate
- = MIC
- = Associate locked into position
- = Secondary Leader
- = Primary position
- = Secondary position(s)
- = Headset

# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash - Receiver Assembler - Shakes/Soups - Fronter
2		/		Dress 1	Load 2 - Cash
3		/		Load 1	Dress 2/Combo

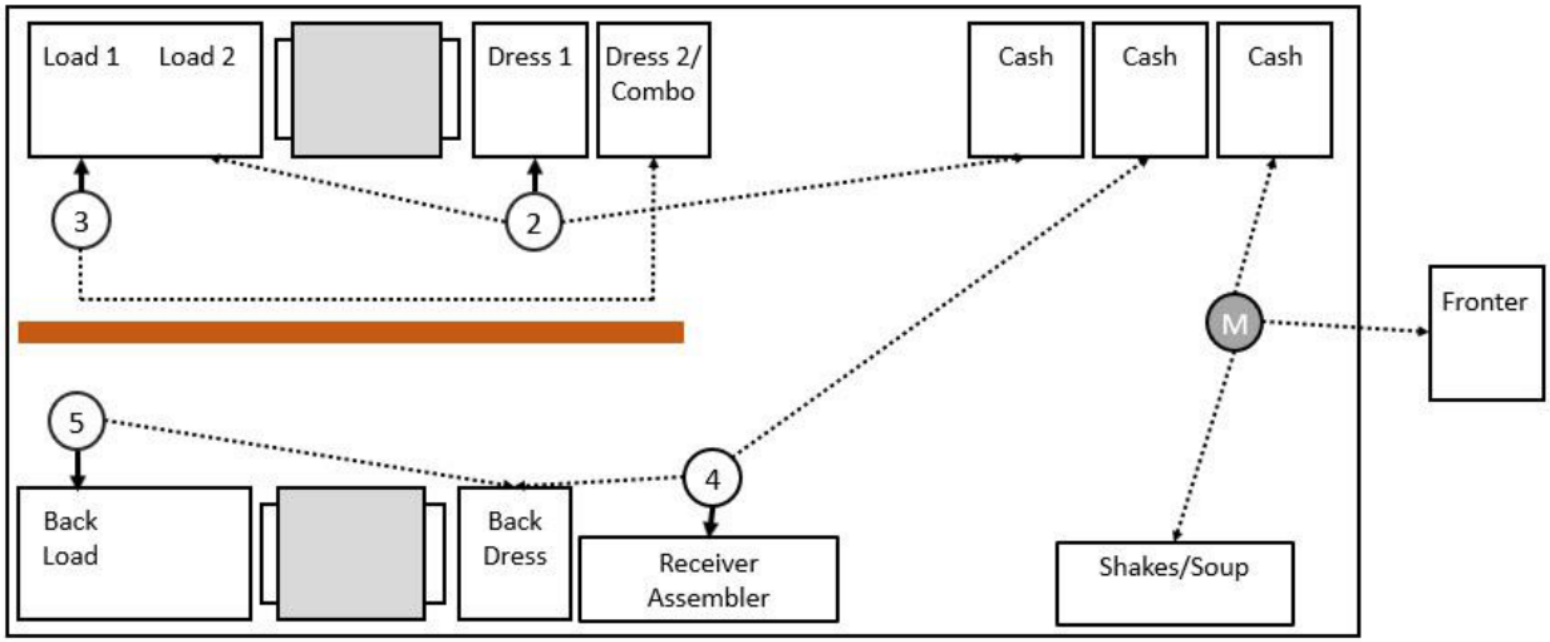
NON-DRIVE THRU SHOPS – 4 (all orders made on frontline)



KEY:
- = Associate
- = MIC
- = Associate locked into position
- = Secondary Leader
- = Primary position
- = Secondary position(s)
- = Headset

# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash - Shakes/Soup - Fronter
2		/		Dress 1	Load 2 - Cash
3		/		Load 1	Dress 2/Combo
4		/		Receiver Assembler	Cash

NON-DRIVE THRU SHOPS – 5 (brickwall begins)

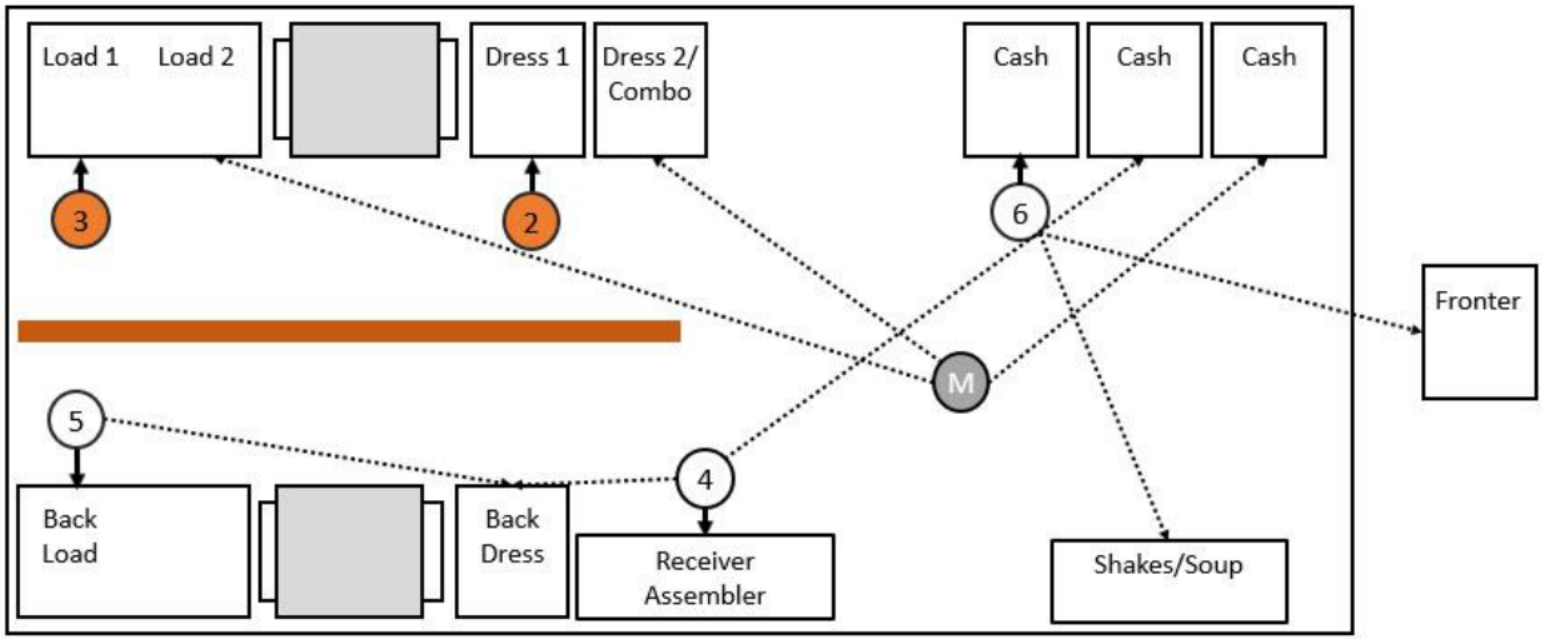


KEY:
- = Associate
- = MIC
- = Associate locked into position
- = Secondary Leader
- = Primary position
- = Secondary position(s)
- = Headset

# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash - Shakes/Soup - Fronter
2		/		Dress 1	Load 2 - Cash
3		/		Load 1	Dress 2/Combo
4		/		Receiver Assembler	Back Dress - Cash
5		/		Back Load	Back Dress

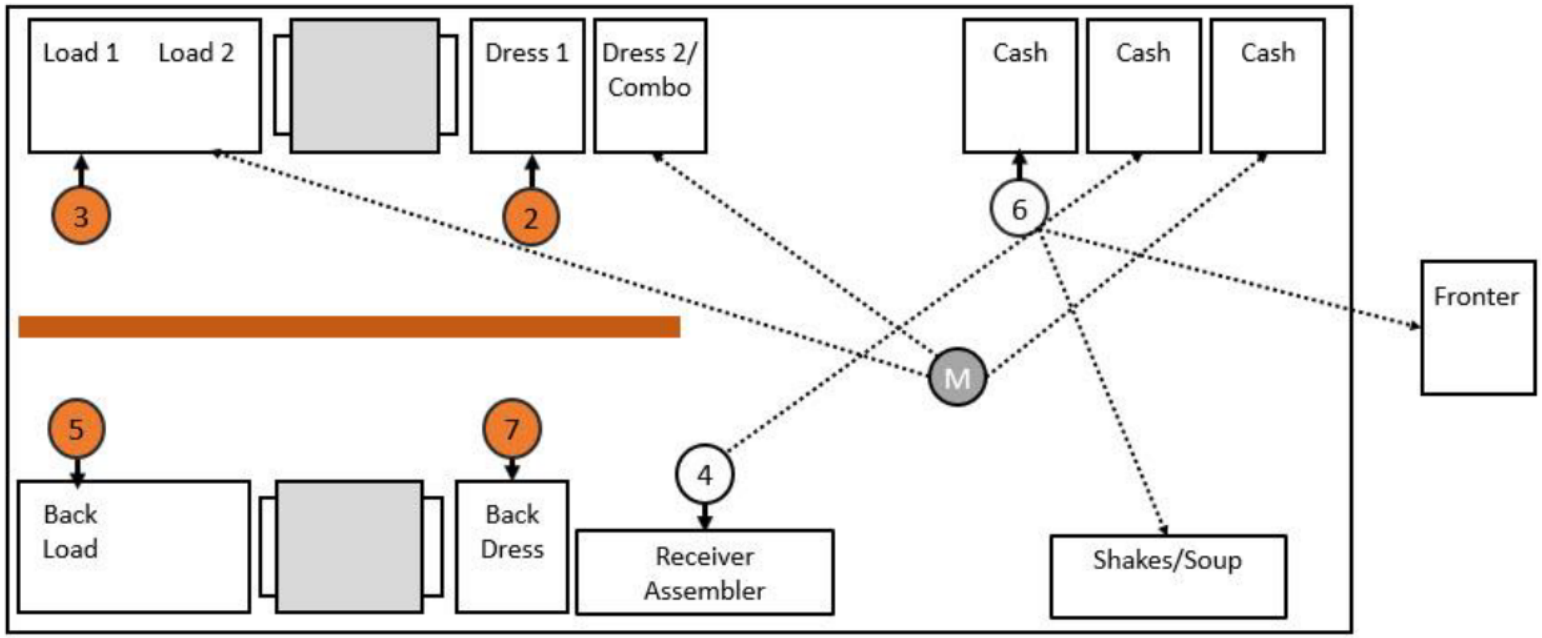
NON-DRIVE THRU SHOPS – 6

KEY:
- = Associate
- = MIC
- = Associate locked into position
- = Secondary Leader
- = Primary position
- = Secondary position(s)
- = Headset



# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Load 2 – Dress 2/Combo - Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	Back Dress - Cash
5		/		Back Load	Back Dress
6		/		Cash	Shakes/Soups - Fronter

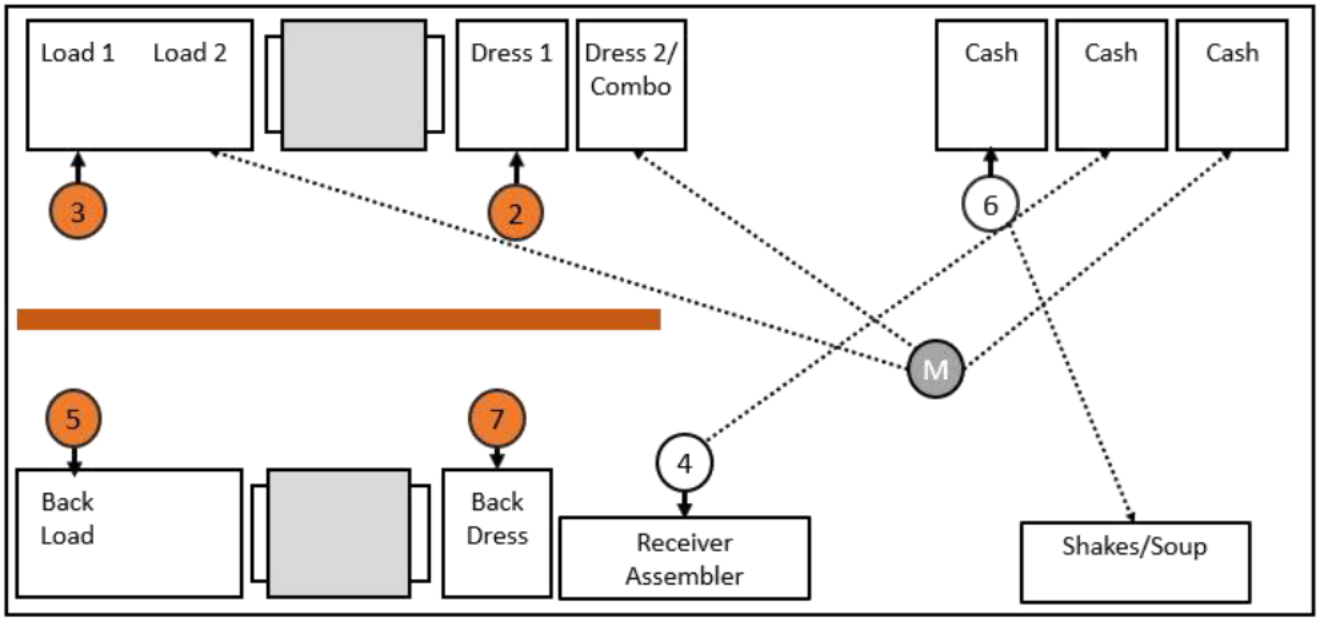
NON-DRIVE THRU SHOPS – 7

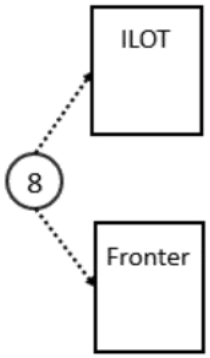


KEY:
- = Associate
- = MIC
- = Associate locked into position
- = Secondary Leader
- = Primary position
- = Secondary position(s)
- = Headset

# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Load 2 – Dress 2/Combo - Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	Cash
5		/		Back Load	LOCKED
6		/		Cash	Shakes/Soups – Fronter
7		/		Back Dress	LOCKED

NON-DRIVE THRU SHOPS – 8



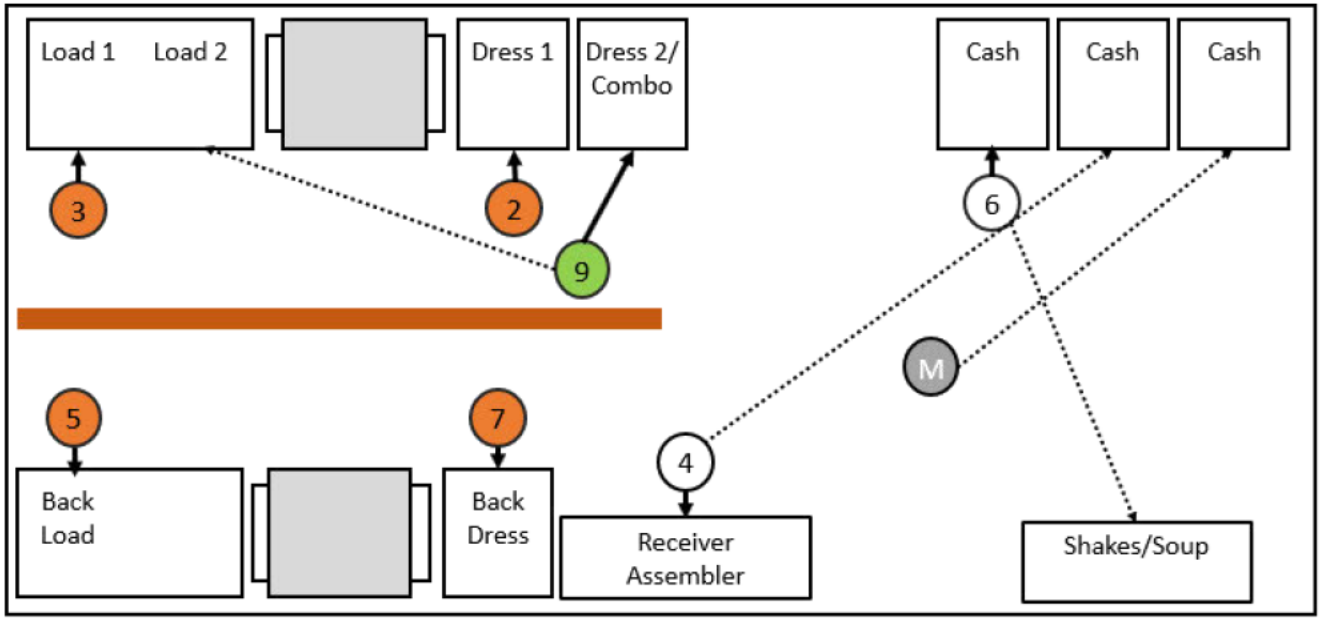


KEY:

- = Associate
- = MIC
- = Associate locked into position
- = Secondary Leader
- = Primary position
- = Secondary position(s)
- = Headset

# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Load 2 – Dress2/Combo - Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	Cash
5		/		Back Load	LOCKED
6		/		Cash	Shakes/Soups
7		/		Back Dress	LOCKED
8		/		ILOT	Fronter

NON-DRIVE THRU SHOPS – 9



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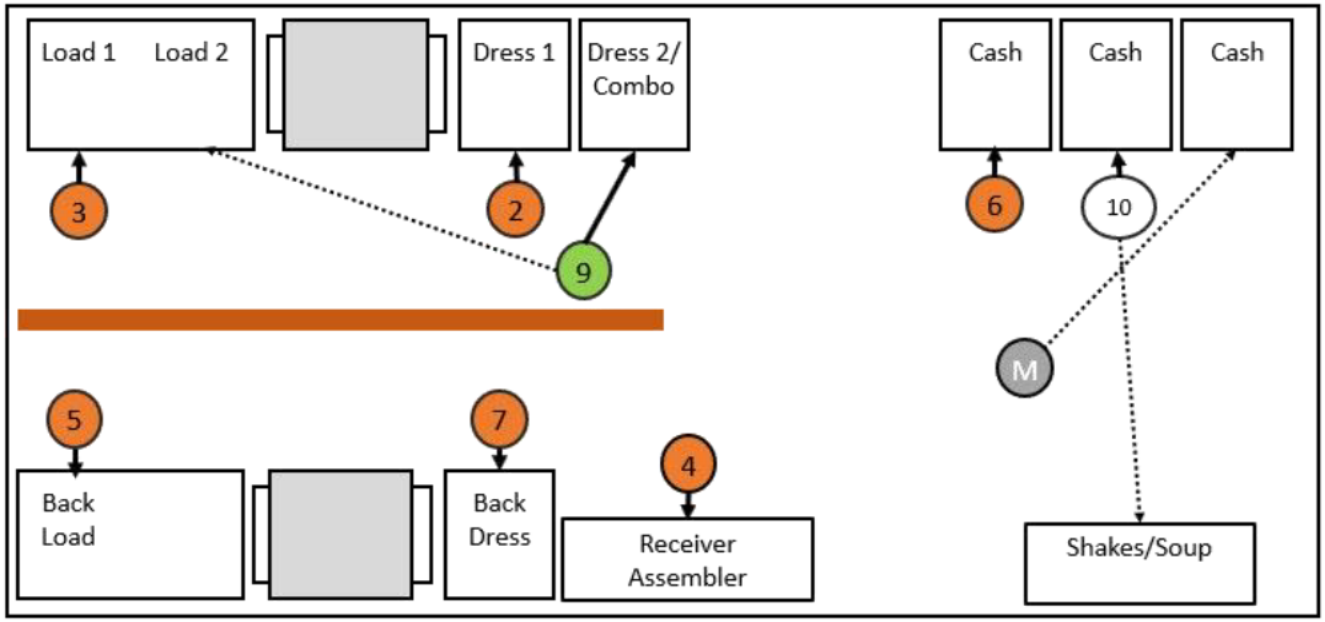
- = Primary position
- = Secondary position(s)
- = Headset

# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	Cash
5		/		Back Load	LOCKED
6		/		Cash	Shakes/Soups
7		/		Back Dress	LOCKED
8		/		ILOT	Fronter
9		/		Dress 2/Combo	Load 2

NON-DRIVE THRU SHOPS – 10



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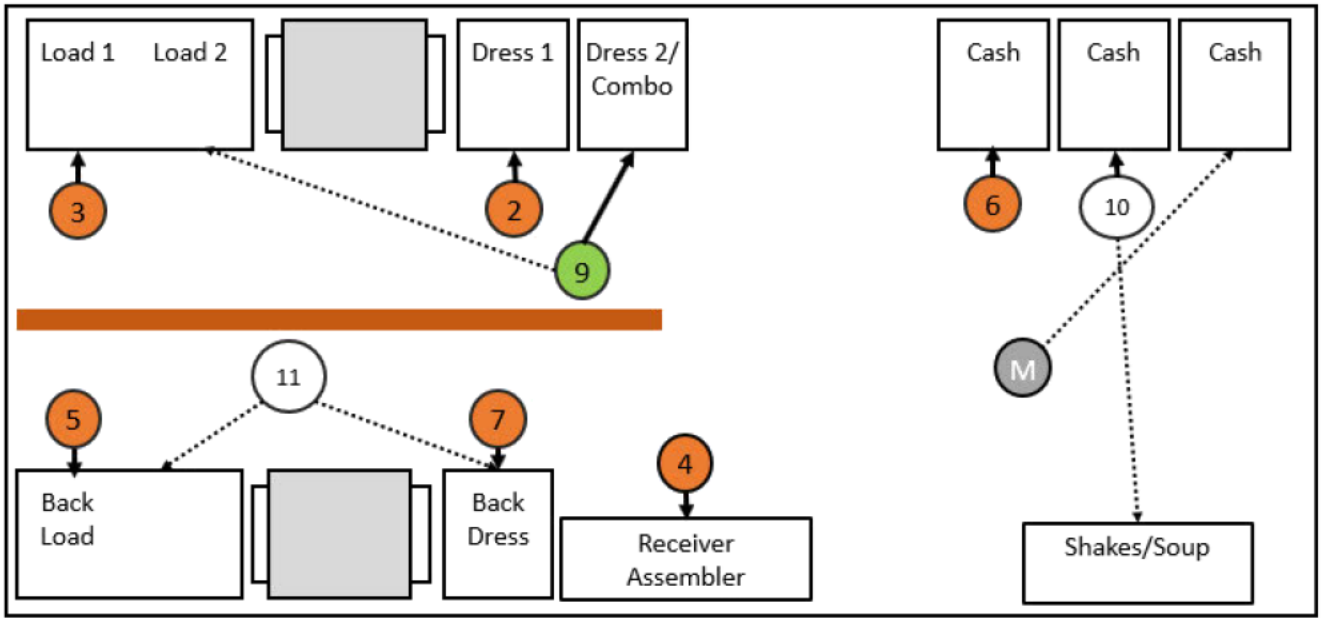
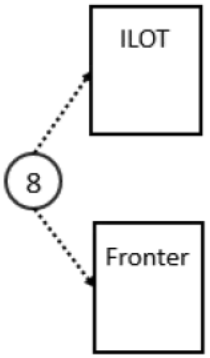
- = Headset

# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	LOCKED
5		/		Back Load	LOCKED
6		/		Cash	LOCKED
7		/		Back Dress	LOCKED
8		/		ILOT	Fronter
9		/		Dress 2/Combo	Load 2
10		/		Cash	Shakes/Soup

NON-DRIVE THRU SHOPS – 11





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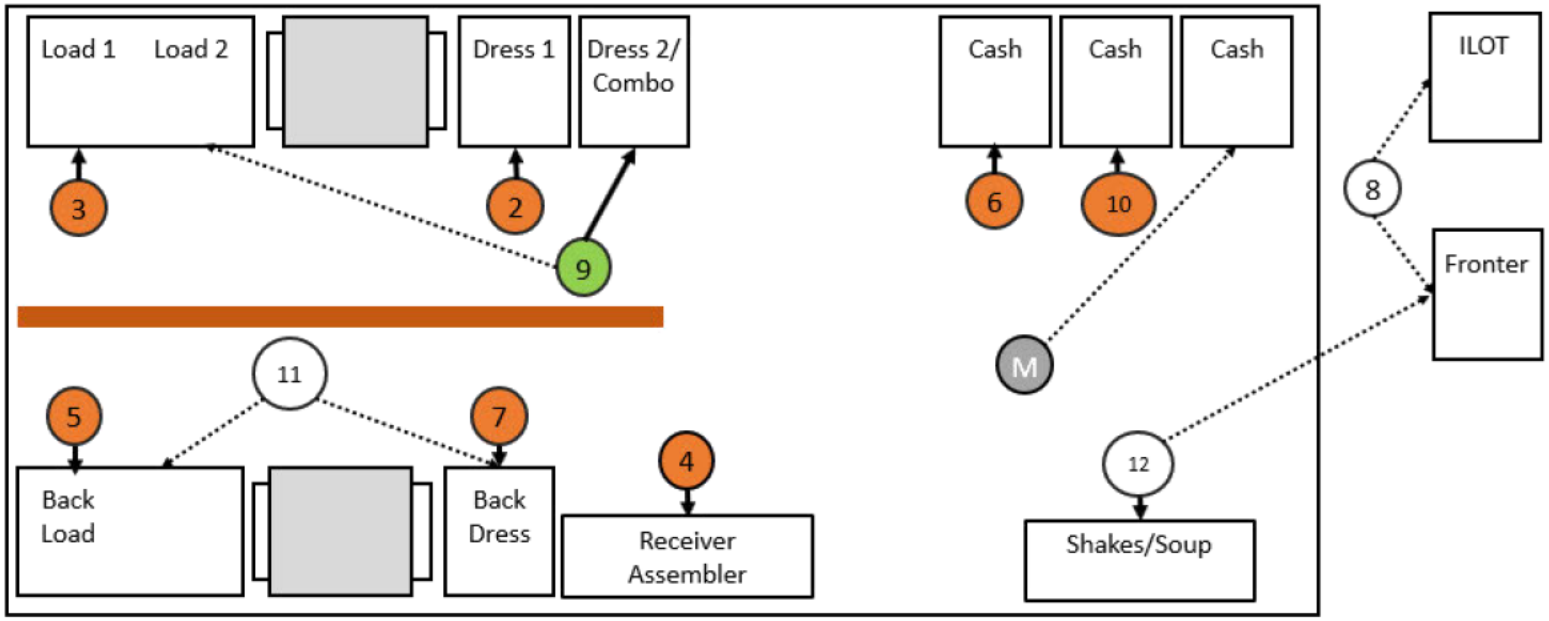
# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	LOCKED
5		/		Back Load	LOCKED
6		/		Cash	LOCKED
7		/		Back Dress	LOCKED
8		/		ILOT	Fronter
9		/		Dress 2/Combo	Load 2
10		/		Cash	Shakes/Soup
11		/		Back Float	Back Load - Back Dress

NON-DRIVE THRU SHOPS – 12



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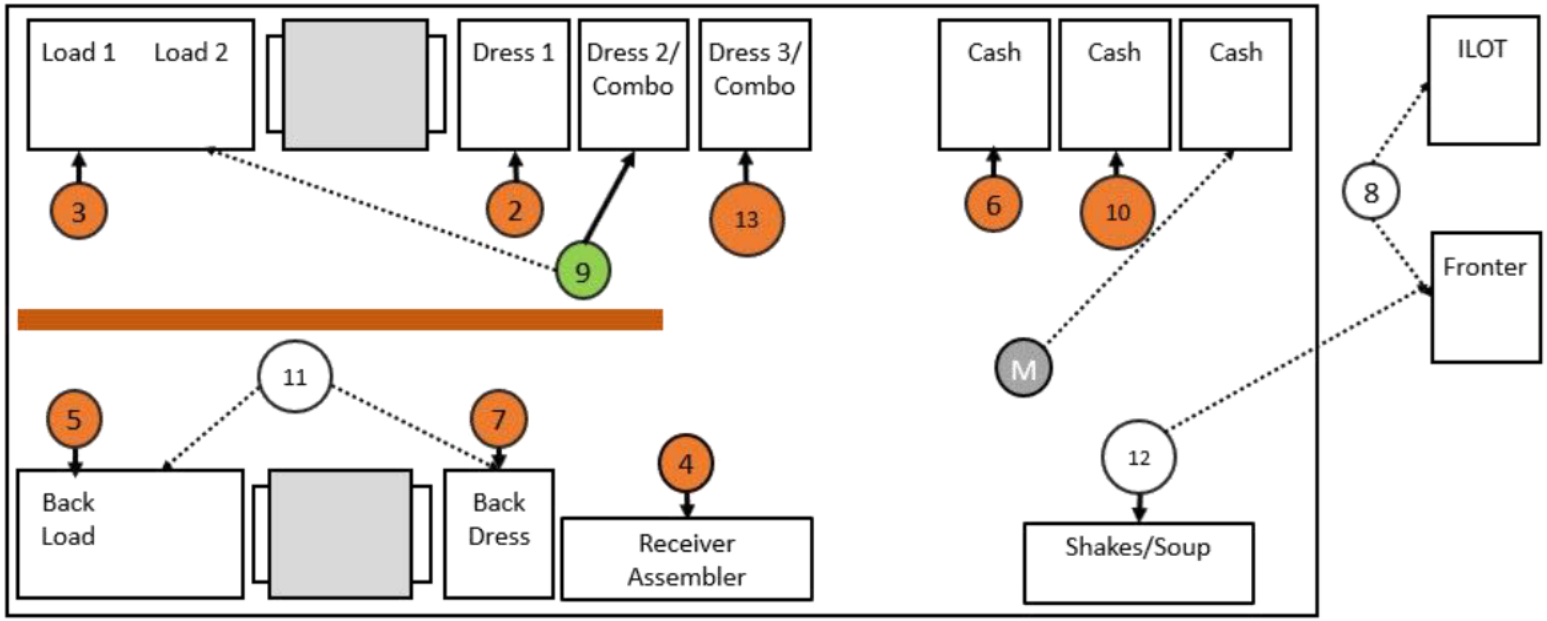
# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	LOCKED
5		/		Back Load	LOCKED
6		/		Cash	LOCKED
7		/		Back Dress	LOCKED
8		/		ILOT	Fronter
9		/		Dress 2/Combo	Load 2
10		/		Cash	LOCKED
11		/		Back Float	Back Load - Back Dress
12		/		Shakes/Soup	Fronter

NON-DRIVE THRU SHOPS – 13



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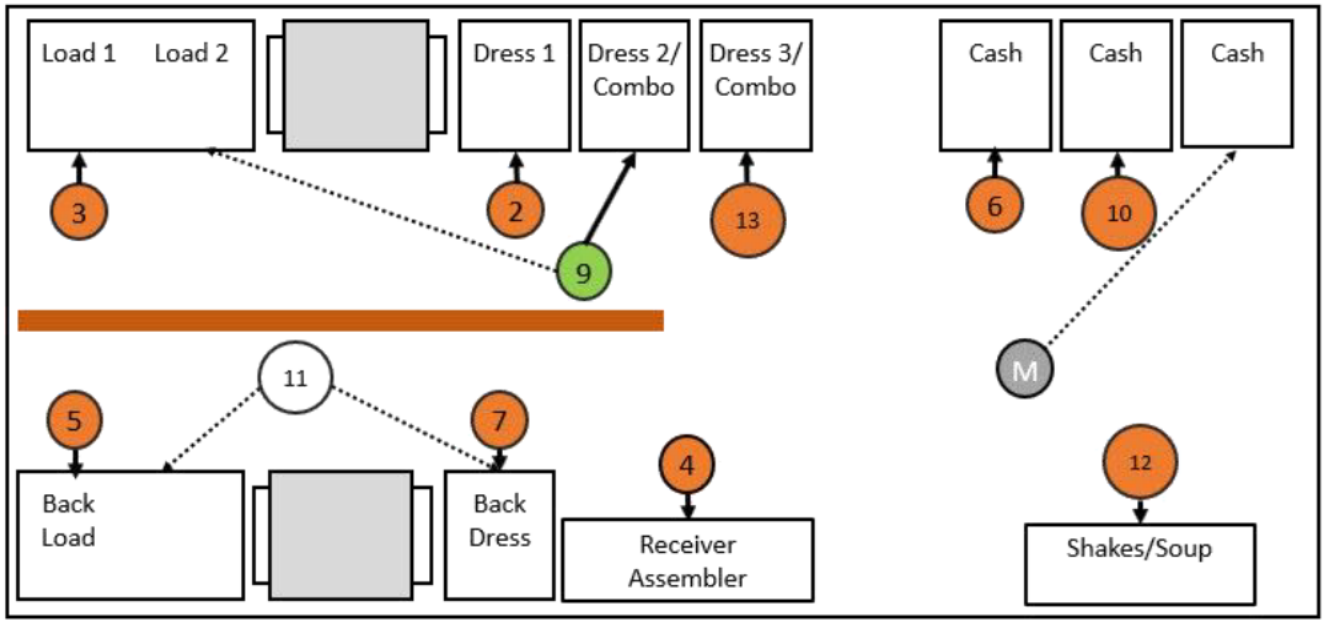
# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	LOCKED
5		/		Back Load	LOCKED
6		/		Cash	LOCKED
7		/		Back Dress	LOCKED
8		/		ILOT	Fronter
9		/		Dress 2/Combo	Load 2
10		/		Cash	LOCKED
11		/		Back Float	Back Load - Back Dress
12		/		Shakes/Soup	Fronter
13		/		Dress 3/Combo	LOCKED

NON-DRIVE THRU SHOPS – 14



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# to Deploy	Employee	IN / OUT	Break	Primary Responsibility	Secondary Responsibility
MIC		/		Float	Cash
2		/		Dress 1	LOCKED
3		/		Load 1	LOCKED
4		/		Receiver Assembler	LOCKED
5		/		Back Load	LOCKED
6		/		Cash	LOCKED
7		/		Back Dress	LOCKED
8		/		ILOT	LOCKED
9		/		Dress 2/Combo	Load 2
10		/		Cash	LOCKED
11		/		Back Float	Back Load - Back Dress
12		/		Shakes/Soup	LOCKED
13		/		Dress 3/Combo	LOCKED
14		/		Fronter	LOCKED

JOB DESCRIPTION
Shift Leader

Job Title: **Shift Leader**			Department/Function: **Operations**
Location: **Field, in Shop**			Reports to: **General Manager**
Job Level N/A Job Band N/A	Full-Time Part-Time	Exempt Nonexempt ☒	Travel Requirements: Frequently Moderately Rarely ☒

GENERAL DESCRIPTION

Leads and behaves according to Potbelly Values. Leads a shift by managing and developing Associates to execute outstanding product quality and customer service, build sales and control costs for each shift. Follow standard Potbelly operating policies, procedures, and tool use with essential areas of focus including but not limited to:

FOCUS

People

- Lead Associates to run great shifts, including assigning tasks (cleaning, line duties, opening/closing duties), providing feedback and training.
- Ensures that all station training programs are executed to standard.
- Know and execute personnel policies, labor laws and safety and security procedures.
- Lead Associates to ensure opening/closing/transition duties are completed without supervision.
- Maintain a fun, positive, respectful, and professional work environment.
- Inform the General Manager of employee issues and concerns.

Customers

- Provide fast, friendly, and accurate service.
- Empower Associates to make sure all customers leave happy.
- Know and execute all food safety requirements and practices.
- Effectively handle customer complaints/issues.

Sales

- Manage and organize the line and delegate duties to Associates.
- Know and uphold standards for product quality.
- Work the line as needed and resolve service barriers.
- Ensure back-of-the-house procedural standards are met.
- Promote sales on the shift through executing the marketing plan within the four walls.

Profits

- Control food costs, labor, waste, and cash on the shift.
- Count drawers and follow proper daily cash handling procedures.

ESSENTIAL PHYSICAL FUNCTIONS

- Ability to stand/walk for 9-10 hours per day.
- Must be able to exert well-paced and frequent mobility for periods of up to five hours.
- Must be able to lift up to 10 pounds frequently and up to 50 pounds occasionally.
- Will frequently reach, feel, bend, stoop, carry, finely manipulate and key in data.
- Must be able to work in both warm and cool environments, indoors (95%) and outdoors (5%).
- Must be able to tolerate higher levels of noise from music, customers and employee traffic.
- Must be able to tolerate potential allergens: peanut products, egg, dairy, gluten, soy, seafood, and shellfish.
- Ability to oversee a fast-paced, high-volume, customer-focused restaurant through coordination of schedules, problem-solving, maintaining cleanliness, training employees, and providing great customer service.

EXPERIENCE, EDUCATION AND BEHAVIORS

- Must represent Potbelly Advantage and Our Values.
- Must be 18 years of age or older.
- Minimum of 1-year supervisory experience in a restaurant or retail environment preferred or through internal development.
- Minimum educational requirement: High School diploma.
- Must be able to work a flexible work schedule that could include a minimum of 2 opens and/or closes per week.
- All management team members are required to complete an approved Food Safety Manager course and successfully complete a proctored Food Safety Manager exam for the jurisdictions they operate in. Recertifications must adhere to the jurisdictional requirements and standards. Should the management team member fail to pass the certification requirements after two attempts, they will be not be qualified to continue to perform in a management team member capacity.

EXHIBIT NO. B1(b) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 3 DATE: 2/2/23 REPORTER: BC

- Must have reliable transportation.

- Ability to comprehend and communicate in English via verbal and written communication, such that employee can perform his or her job responsibilities
- Exceptional customer service skills.
- Strong communication skills, both written and verbal.
- Strong organizational skills and the ability to multi-task.
- Strong interpersonal skills.
- Ability to train and coach others.
- Must be able to demonstrate strong leadership skills at all times.
- Must be a strong team-player.
- Ability to manage a fast-paced, high-volume shifts while providing excellent customer service.

REVIEWED BY	*Title*
APPROVED BY	*Title*
DATE POSTED	
DATE HIRED	

284 - 6th and Yamhill

2.02 Manager Schedule

Fiscal Year: 2023
Period: 1
12/26/2022 - 1/22/2023

Period 1 / Week 1	Hours	Mon 12/26	Tue 12/27	Wed 12/28	Thu 12/29	Fri 12/30	Sat 12/31	Sun 1/01
Arteaga Ochoa, Miriam	37.00	6:00a - 3:30p	6:00a - 3:00p	6:00a - 3:30p	6:00a - 3:00p	OFF	OFF	OFF
Mckinnis, Starr	37.00	6:00a - 5:00p	6:00a - 5:00p	OFF	OFF	6:00a - 2:00p	7:00a - 2:00p	OFF
Allen, Saphira	28.00	Personal	OFF	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	Personal
Lawson, Samuel	33.00	OFF	OFF	6:00a - 1:00p	OFF	6:00a - 3:00p	8:00a - 3:00p	8:00a - 6:00p
Yarbrough, Naaman	37.00	1:00p - 9:00p	1:00p - 9:00p	12:00p - 7:00p	12:00p - 6:00p	Personal	Personal	1:00p - 9:00p
Period 1 / Week 2	**Hours**	**Mon 1/02**	**Tue 1/03**	**Wed 1/04**	**Thu 1/05**	**Fri 1/06**	**Sat 1/07**	**Sun 1/08**
Arteaga Ochoa, Miriam	45.00	6:00a - 3:30p	6:00a - 3:00p	6:00a - 3:30p	6:00a - 3:00p	OFF	OFF	7:00a - 3:00p
Mckinnis, Starr	45.00	6:00a - 5:00p	6:00a - 3:00p	OFF	OFF	6:00a - 3:00p	7:00a - 2:00p	7:00a - 4:00p
Allen, Saphira	35.00	Personal	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	Personal
Lawson, Samuel	33.00	OFF	OFF	6:00a - 1:00p	OFF	6:00a - 3:00p	8:00a - 4:00p	12:00p - 9:00p
Yarbrough, Naaman	35.00	1:00p - 9:00p	12:00p - 6:00p	12:00p - 7:00p	12:00p - 6:00p	Personal	Personal	1:00p - 9:00p
Period 1 / Week 3	**Hours**	**Mon 1/09**	**Tue 1/10**	**Wed 1/11**	**Thu 1/12**	**Fri 1/13**	**Sat 1/14**	**Sun 1/15**
Arteaga Ochoa, Miriam	45.00	6:00a - 3:30p	6:00a - 3:00p	6:00a - 3:30p	6:00a - 3:00p	OFF	OFF	7:00a - 3:00p
Mckinnis, Starr	45.00	6:00a - 5:00p	OFF	OFF	6:00a - 3:00p	6:00a - 3:00p	7:00a - 2:00p	7:00a - 4:00p
Allen, Saphira	35.00	Personal	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	Personal
Lawson, Samuel	34.00	OFF	OFF	OFF	7:00a - 4:00p	7:00a - 3:00p	8:00a - 4:00p	12:00p - 9:00p
Yarbrough, Naaman	35.00	1:00p - 9:00p	12:00p - 7:00p	12:00p - 6:00p	12:00p - 6:00p	Personal	Personal	1:00p - 9:00p
Period 1 / Week 4	**Hours**	**Mon 1/16**	**Tue 1/17**	**Wed 1/18**	**Thu 1/19**	**Fri 1/20**	**Sat 1/21**	**Sun 1/22**
Arteaga Ochoa, Miriam	45.50	6:00a - 4:00p	6:00a - 3:00p	6:00a - 3:30p	6:00a - 3:00p	OFF	OFF	7:00a - 3:00p
Mckinnis, Starr	45.00	6:00a - 5:00p	6:00a - 3:00p	OFF	OFF	6:00a - 3:00p	7:00a - 2:00p	7:00a - 4:00p
Allen, Saphira	36.00	3:00p - 4:00p	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	2:00p - 9:00p	Personal
Lawson, Samuel	32.00	3:00p - 4:00p	OFF	OFF	6:00a - 1:00p	7:00a - 3:00p	8:00a - 3:00p	12:00p - 9:00p
Yarbrough, Naaman	35.00	1:00p - 9:00p	12:00p - 6:00p	12:00p - 7:00p	12:00p - 6:00p	Personal	Personal	1:00p - 9:00p

Jobcodes: All

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EXHIBIT NO. B1(c) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

Daily - 3. Post-Peak Checklist (1:00 PM to 4:00 PM)

Delete

Corporate Office

111 N. Canal
Chicago, Illinois 60606
United States

EXHIBIT NO. B1(d) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

Completed By

People

Deployment map in use?

Yes
No

Summary - What went well? What were the opportunities? Include plan to maintain what went well and improve opportunities!

0/512

Customers

Did you deploy ILOT today?

Yes
No

Summary - What went well? What were the opportunities? Include plan to maintain what went well and improve opportunities!

0/512

Sales

Summary - What went well? What were the opportunities? Include plan to maintain what went well and improve opportunities!

0/512

Profit

Count of Wasted Bread (Including Sandwiches)

# of Sandwiches

Summary - What went well? What were the opportunities? Include plan to maintain what went well and improve opportunities!

0/512

Transition Tasks

Exterior & Patio Clean and Set

Yes
No

Dining Room Clean and Set

Yes
No

Stock Chips and Beverage Cooler

Yes
No

Stock Fountain Station - sugars, lids, straws, napkins, lemon wedges

Yes
No

Breakdown and Consolidate Stations

Yes
No

Empty full trash bins and sweep the line

Yes
No

Wash, Rinse and Sanitize Dishes

Yes
No

Clean, organize and reset BOH

Yes
No

Hand washing sinks are accessible, useable, properly stocked with paper towel and soap, and used only for handwashing

Yes
No

All associates observed washing hands and changing gloves properly

Yes
No

Prep for next shift

Yes
No

Checkout Cash Drawers and Validate All checks are closed on all terminals, including web/app and 3rd party orders

Yes

No

Safe Audit and Cash Drop #1

Yes

No

Check Sales/Labor - Adjust As Needed

Yes

No

Complete Mid-Day Workflow In NBO

Yes

No

Complete Shift Evaluation - Midday Huddle

Yes

No

Backline Call Backs

Yes

No

Conduct Shift Huddle at "Hot Off the Stove"

Yes

No

Adjust/Pull Bread As Needed - LESS, MORE OFTEN - Each bag of bread is labeled with thaw date (DAYMARK ONLY)

Yes

No

Post Peak Temp Log Complete

Yes

No

Confirm left-over Soups, Cookies, and Meatballs are discarded by 2pm.

Yes

No

Review Applications in TalentReef

Yes

No

Manager Walk & Shift Handoff

Yes

No

Done

Daily - 4. Closing Checklist (3:00 PM - Close)

Delete

Corporate Office

111 N. Canal
Chicago, Illinois 60606
United States

EXHIBIT NO. B1(e) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

Completed By

General

Hand washing sinks are accessible, useable, properly stocked with paper towel and soap, and used only for handwashing

Yes
No

All associates observed washing hands and changing gloves properly (every two hours or when changing tasks)

Yes
No

Dining Room

Tables Clean and Level, Chairs Neatly Arranged

Yes
No

Chips Fully Stocked

Yes
No

Condiments Stocked (salt, pepper, sugars, etc)

Yes
No

All Glass Doors, Ledges and Windows Clean

Yes
No

Napkin Dispensers Full and Clean

Yes
No

Entryway Clean/Dust Free, Counter Tops Clean

Yes
No

Beverage Station

Soda machine backsplash and drip pan cleaned & shined

Yes

No

Countertop clean

Yes

No

Reach in Cooler

Beverages fully stocked and faced

Yes

No

Current/accurate price slats in place

Yes

No

Restrooms

Mirrors Clean

Yes

No

Diaper Changer cleaned and stocked (liners)

Yes

No

N/A

Soap, paper towels & toilet paper stocked

Yes

No

Garbage clean inside and out

Yes

No

Load

Bread/FLATS brought up and day dotted correctly (DAYMARK ONLY)

Yes

No

Scale clean and in place

Yes

No

Bread well cleaned out

Yes

No

NA

Station/gaskets clean and crumb free

Yes

No

All product rotated, stocked and dated (DAYMARK ONLY)

Yes

No

All drawers pulled out and cleaned

Yes

No

Fan blade grates cleaned

Yes

No

Dress

Pint bags, wax paper, salad bowls & lids stocked

Yes

No

Stations/gaskets clean and shined

Yes

No

Salad drawers pulled out and cleaned

Yes

No

All product rotated, stocked and dated (DAYMARK ONLY)

Yes

No

Bottles & shakers full in correct bottles with correct tops

Yes

No

Restock dressings

Yes

No

Cash

Handle, 12# & 1/8 bags stocked

Yes

No

Countertop under POS and shelving cleaned and stocked

Yes

No

Menus stocked

Yes

No

Mini sides stocked

Yes

No

Backup register paper and pens stocked

Yes

No

Plasticware stocked

Yes

No

Sugars, lids & straws stocked

Yes
No

Shakes

Cups/lids/straws stocked

Yes
No

Dipping case & station walls clean

Yes
No

Shake machine/motor base is lifted and cleaned underneath

Yes
No

Back up syrup, milk, Oreos, and strawberries stocked/labeled (DAYMARK ONLY)

Yes
No

Soups

Crackers, cups, lids and spoons stocked

Yes
No

Soup pulled in walk-in to thaw

Yes
No

Service Line

Pull all equipment out and sweep/scrub/mop behind stations (1 station at a time)

Yes
No

Walk-in Cooler

Cooler functioning properly

Yes

No

Fan blade grates cleaned

Yes

No

Nothing on the floor under shelving

Yes

No

All product dated/labeled (DAYMARK ONLY), rotated & stocked to schematic

Yes

No

All expired product discarded

Yes

No

Floors and baseboards swept, scrubbed and mopped

Yes
No

Chicken thawing on trays with date label

Yes
No

Back of House

Garbage emptied/ready for AM disposal

Yes
No

Shelves clean and organized

Yes
No

Prep table and area clean

Yes

No

Utensil rack cleaned

Yes

No

Mop sink and mop bucket clean

Yes

No

Dirty aprons & towels in proper place

Yes

No

Boxes broken down and organized

Yes

No

Floors and baseboards swept, scrubbed and mopped; Floor drains cleaned

Yes
No

BOH Cleaned and organized

Yes
No

Dining Room/Customer Area - After Close

Lock doors/Close shop <u>NO EARLIER</u> than 15 minutes <u>AFTER</u> to posted closing time

Yes
No

Mats Clean and Dry

Yes
No

Dining Room Floor swept, scrubbed and mopped

Yes

No

Patio Clean and Furniture/Umbrellas Secured

Yes

No

Beverage Station - After Close

Fountain station floor and floor drain cleaned

Yes

No

Soda nozzles and ice chute cleaned & sanitized

Yes

No

Restrooms - After Close

Floors and baseboards swept, scrubbed and mopped; Floor drains cleaned

Yes

No

Sinks/toilets clean

Yes
No

Service Line - After Close

Meatball warmer emptied, cleaned and reset for AM

Yes
No

Ovens turned off

Yes
No

Floors and baseboards swept, scrubbed and mopped; Floor drains cleaned

Yes
No

Utensils stocked for AM

Yes
No

Remove and clean Oven Eye Brows, Extenders & Crumb Trays

Yes
No

Take a photo of oven filters showing them clean.

See example photo of clean oven filter

Take a photo of oven eyebrows showing them clean.

See example photo of clean oven eyebrow

Load - After Close

Wrap and date label (DAYMARK ONLY) all open bread/FLATS

Yes
No

Cutting board cleaned & sanitized

Yes
No

All product covered

Yes
No

All expired product discarded

Yes
No

Cooler plugged in and working

Yes
No

Dress - After Close

Cutting board cleaned & sanitized

Yes
No

All product covered

Yes
No

All expired product discarded

Yes
No

Cooler plugged in and working

Yes

No

Cash - After Close

Cookies dated and placed in container to be sold tomorrow

Yes

No

Shakes - After Close

Blender rinser is disassembled and cleaned

Yes

No

Mixing cups/blender pitchers clean

Yes

No

Dipper well and utensils cleaned and sanitized

Yes

No

Pour hot water down the shake station sink and floor drains

Yes
No

All product covered

Yes
No

All expired product discarded

Yes
No

Cooler plugged in and working

Yes
No

Soups - After Close

Leftover soups & meatballs placed in ice/water bath

Yes

No

Garden Vegetable Soup and Mac & Cheese discarded

Yes

No

Soup warmer emptied, cleaned and reset for AM

Yes

No

Back of House - After Close

Sinks rinsed out and clean

Yes

No

Dishes clean and organized with all handles up

Yes

No

Mops, brooms hanging up

Yes
No

Evening Reset

Catering Order Pre-Work Set For Next Day

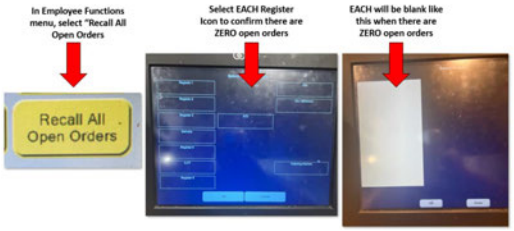
Yes
No

All checks are closed on all terminals, including web/app and 3rd party orders

Yes
No

Take a photo showing "Recall All Open Orders" screen on POS - Be sure to check each drawer prior to taking photo!

TAKE PHOTO OF MIDDLE EXAMPLE PHOTO AFTER CHECKING EACH DRAWER - CLICK TO SEE EXAMPLE:



Checkout Cash Drawers

Yes

No

Run Closing Workflow in NBO

Yes

No

Team Walk With Closing Checklist

Yes

No

Ensure All Employees Are Clocked Out

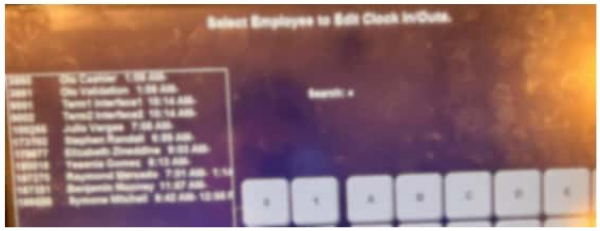
Yes

No

Take a photo showing "Edit Time" screen on POS showing employee punches to validate **All Employees Are Clocked Out** (photo should show every employee clocked out with exception of MIC, who should clock out immediately after taking this photo and submitting closing checklist)

CLICK THIS BUTTON TO VIEW EDIT PUNCHES

TAKE PHOTO OF THIS SCREEN CLEARLY SHOWING ALL EMPLOYEES CLOCKED OUT



Done

Daily - 1. Opening Checklist (Open - 11:30 AM)

Delete

Corporate Office

111 N. Canal
Chicago, Illinois 60606
United States

EXHIBIT NO. B1(f) RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 2 DATE: 2/2/23 REPORTER: BC

Completed By

Clock In and Power Up Equipment

Clock In

Yes
No

Power Up Equipment

Yes
No

Evaluate the Close

Safety & Security Check/Doors Locked/Alarm On

Yes
No

Open Checks & Clock Outs Checked

Yes
No

Waste Entered Into NBO

Yes
No

Closing Safe Audit & Cashier Audits Completed

Yes
No

Verify Cash Over/Short

Yes
No

Line Stations Reset to POPS

Yes
No

Productivity Tablet/DayMark Tablets plugged in, powered on and opened

Yes
No

Reach-in Cooler Fully Stocked with price slats and nothing expired

Yes

No

Walk-in Cooler Stocked, Clean & Organized

Yes

No

BOH Shelving and Floor are Organized & Clean

Yes

No

Catering Pre-work Completed

Yes

No

Bread & Soup Thawed

Yes

No

Tables and Chairs Clean & Reset

Yes

No

Restrooms Clean & Reset

Yes

No

Floors Clean

Yes

No

Opening Tasks

Check email and Closing Recap

Yes

No

Complete Opening Workflow in NBO

Yes
No

Review Punches and Payroll

Yes
No

Review Applications in TalentReef

Yes
No

Print and Review Line-up & Deployment Maps

Yes
No

Update "Hot Off the Stove" (Post SMG Dashboard, PTD Sales/Labor, Shift Huddle Notes, Daily Goals)

Yes
No

Check MOL For Any Pending Invoices

Yes
No

Perform Opening Safe Audit

Yes
No

Cash Drawer Assigned & Doors Unlocked 15 minutes before posted opening time

Yes
No

Check-in and Place Product Orders

Yes
No

Hand washing sinks are accessible, useable, properly stocked with paper towel and soap, and used only for handwashing

Yes
No

All associates observed washing hands and changing gloves properly

Yes
No

Set up Stations, Complete Line Prep Tasks, and Validate all Expired Product Discarded

Yes
No

Opening Temp Log Complete

Yes
No

Has DM approved Temp Logs in the Past 12 Days? If not, call DM immediately

Yes
No

Unlock doors/Open to serve customers <u>NO LATER</u> than 15 minutes <u>PRIOR</u> to posted opening time

Yes

No

Pre-Peak Checklist

Exterior/Patio Clean and Set

Yes

No

Dining Room Clean and Set

Yes

No

Beverage Station Clean and Set

Yes

No

Restrooms Clean and Set

Yes

No

Customer Counter Clean and Set; Chips Stocked

Yes
No

Hand washing sinks are accessible, useable, properly stocked with paper towel and soap, and used only for handwashing

Yes
No

All associates observed washing hands and changing gloves properly

Yes
No

Load, Oven, Dress, and Salad stations set with all food stocked below fill line

Yes
No

Backline Load, Oven, Dress and Assembler stations clean and set

Yes
No

Compare Toasted Bread to QS Card - confirm oven is clean and assembled correctly (eyebrow placement, catch trays, chain gaurds, crumb trays, belt)

Yes

No

Shakes/Soups Stocked, Clean and Set

Yes

No

BOH and Walk-in Cooler clean, organized and stocked

Yes

No

Pre-Peak Temp Log Complete

Yes

No

Check for Future Orders in ATO/Olo Expo

Yes

No

Done

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Emmanuel Johnson								
		1/9/2023							
			Relative Edit Punches						
				1.01	0	Emmanuel Johnson	2:13 PM	1.00	Original Clock In Time: 14:13:00, Edited Clock In Time: 14:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
	Miriam Arteaga Ochoa								
		11/1/2022							
			Reopen Check Count						
				1.00	400099	Olo Cashier	12:00 AM	1.00	Adjustment Type: Voids, Number of Voids: 6, Amount: 0.00, Check ReOpen Time: 11:10:02, Check Close Time: 00:00:11.
			Reopen Check Count Total:					**1.00**	
		11/10/2022							
			Reopen Check Count						
				1.00	10127	Miriam Arteaga Ochoa	12:50 PM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 1, Amount: 7.49, Number of Items: 3, Amount: 6.69, Check ReOpen Time: 12:50:28, Check Close Time: 12:50:36.
			Reopen Check Count Total:					**1.00**	
		11/29/2022							
			Relative Edit Punches						
				3.03	0	Yasmine Francisco	3:45 PM	1.00	Original Clock In Time: 14:59:00, Edited Clock In Time: 14:00:00, Original Clock Out Time: 15:44:00, Edit Clock Out Time: 15:44:00
					0	Samuel Lawson	3:46 PM	1.00	Original Clock In Time: 15:44:00, Edited Clock In Time: 15:00:00, Original Clock Out Time: 15:45:00, Edit Clock Out Time: 15:45:00
					0	Yasmine Francisco	3:46 PM	1.00	Original Clock In Time: 14:59:00, Edited Clock In Time: 15:00:00, Original Clock Out Time: 15:44:00, Edit Clock Out Time: 15:44:00
			Relative Edit Punches Total:					**3.00**	

EXHIBIT NO. B2 RECEIVED x REJECTED _____

CASE NO 19-RC-310218 CASE NAME Potbelly Sandwich Works

NO OF PAGES 3 DATE: 2/2/23 REPORTER: BC

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Miriam Arteaga Ochoa								
		11/30/2022							
			Relative Edit Punches						
				1.52	0	Lee Hood	10:24 AM	1.00	Original Clock In Time: 10:24:00, Edited Clock In Time: 07:11:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		12/6/2022							
			Reopen Check Count						
				1.00	10117	Miriam Arteaga Ochoa	1:44 PM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 1, Amount: 14.29, Number of Items: 7, Amount: 10.39, Check ReOpen Time: 13:44:29, Check Close Time: 13:44:42.
					10117	Miriam Arteaga Ochoa	1:44 PM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 1, Amount: 14.29, Number of Items: 7, Amount: 10.39, Check ReOpen Time: 13:44:29, Check Close Time: 13:44:42.
			Reopen Check Count Total:					**2.00**	
		12/7/2022							
			Reopen Check Count						
				1.00	20055	Miriam Arteaga Ochoa	11:28 AM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 2.59, Check ReOpen Time: 11:28:15, Check Close Time: 11:28:18.
			Reopen Check Count Total:					**1.00**	
		12/8/2022							
			Relative Edit Punches						
				1.01	0	Yasmine Francisco	2:33 PM	1.00	Original Clock In Time: 09:05:00, Edited Clock In Time: 09:05:00, Original Clock Out Time: 14:32:00, Edit Clock Out Time: 14:00:00
			Relative Edit Punches Total:					**1.00**	
		1/3/2023							
			Relative Edit Punches						

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Miriam Arteaga Ochoa								
		1/3/2023							
			Relative Edit Punches						
				1.01	0	Jesus Pascual	3:26 PM	1.00	Original Clock In Time: 15:26:00, Edited Clock In Time: 15:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
			Reopen Check Count						
				1.00	10022	Miriam Arteaga Ochoa	9:43 AM	1.00	Adjustment Type: Order Items, Number of Items: 11, Amount: 14.85, Check ReOpen Time: 09:42:48, Check Close Time: 09:43:04.
					10159	Miriam Arteaga Ochoa	1:19 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 3.29, Check ReOpen Time: 13:19:35, Check Close Time: 13:19:44.
					400007	Miriam Arteaga Ochoa	7:50 AM	1.00	Adjustment Type: Order Items, Number of Items: 8, Amount: 0.00, Check ReOpen Time: 07:50:02, Check Close Time: 07:50:06.
					400118	Miriam Arteaga Ochoa	11:45 AM	1.00	Adjustment Type: Order Items, Number of Items: 11, Amount: 12.68, Check ReOpen Time: 11:45:16, Check Close Time: 11:45:19.
			Reopen Check Count Total:					**4.00**	
		1/4/2023							
			Reopen Check Count						
				1.00	10015	Miriam Arteaga Ochoa	8:38 AM	1.00	Adjustment Type: Promos, Voids, Apply Payment, Order Items, Number of Promos: 1, Number of Voids: 1, Amount: 7.49, Number of Payments: 1, Amount: 5.00, Number of Items: 7, Amount: 0.00, Check ReOpen Time: 08:37:49, Check Close Time: 08:38:11.
			Reopen Check Count Total:					**1.00**	
		1/12/2023							
			Reopen Check Count						
				1.00	10029	Miriam Arteaga Ochoa	10:06 AM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 2.59, Check ReOpen Time: 10:05:07, Check Close Time: 10:06:01.
			Reopen Check Count Total:					**1.00**	

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Miriam Arteaga Ochoa								
		1/17/2023							
			Reopen Check Count						
				1.00	10001	Miriam Arteaga Ochoa	7:02 AM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 2.59, Check ReOpen Time: 07:02:14, Check Close Time: 07:02:18.
					10032	Miriam Arteaga Ochoa	11:22 AM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 1, Amount: 0.00, Number of Items: 1, Amount: 2.59, Check ReOpen Time: 11:22:42, Check Close Time: 11:22:46.
					10033	Miriam Arteaga Ochoa	11:11 AM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 1, Amount: 2.59, Number of Items: 1, Amount: 2.59, Check ReOpen Time: 11:10:51, Check Close Time: 11:11:12.
			Reopen Check Count Total:					**3.00**	
	Naaman Yarbrough								
		11/14/2022							
			Reopen Check Count						
				1.00	10151	Naaman Yarbrough	2:07 PM	1.00	Adjustment Type: Apply Payment, Order Items, Number of Payments: 1, Amount: 10.39, Number of Items: 2, Amount: 0.00, Check ReOpen Time: 14:07:08, Check Close Time: 14:07:47.
					10161	Naaman Yarbrough	2:49 PM	1.00	Adjustment Type: Check ReOpen Time: 14:49:07, Check Close Time: 14:49:10.
			Reopen Check Count Total:					**2.00**	
		11/21/2022							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	2:20 PM	1.00	Original Clock In Time: 14:20:00, Edited Clock In Time: 13:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		12/5/2022							
			Reopen Check Count						

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Naaman Yarbrough								
		12/5/2022							
			Reopen Check Count						
				1.00	10062	Naaman Yarbrough	5:31 PM	1.00	Adjustment Type: Check ReOpen Time: 17:31:53, Check Close Time: 17:31:59.
			Reopen Check Count Total:					**1.00**	
		12/21/2022							
			Relative Edit Punches						
				1.01	0	Kellie Skyles	9:18 PM	1.00	Original Clock In Time: 21:17:00, Edited Clock In Time: 13:00:00, Original Clock Out Time: 21:18:00, Edit Clock Out Time: 21:18:00
			Relative Edit Punches Total:					**1.00**	
		12/22/2022							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	3:16 PM	1.00	Original Clock In Time: 15:16:00, Edited Clock In Time: 13:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		12/26/2022							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	3:04 PM	1.00	Original Clock In Time: 15:03:00, Edited Clock In Time: 13:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		12/28/2022							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	12:03 PM	1.00	Original Clock In Time: 12:02:00, Edited Clock In Time: 12:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Naaman Yarbrough								
		1/2/2023							
			Relative Edit Punches						
				1.01	0	Kellie Skyles	9:35 PM	1.00	Original Clock In Time: 21:35:00, Edited Clock In Time: 13:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		1/3/2023							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	4:21 PM	1.00	Original Clock In Time: 16:20:00, Edited Clock In Time: 13:21:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		1/11/2023							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	12:07 PM	1.00	Original Clock In Time: 12:07:00, Edited Clock In Time: 12:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
	Samuel Lawson								
		12/2/2022							
			Relative Edit Punches						
				3.03	0	Destiny Roberts	3:00 PM	1.00	Original Clock In Time: 06:57:00, Edited Clock In Time: 06:57:00, Original Clock Out Time: 14:59:00, Edit Clock Out Time: 14:00:00
					0	Paulina Lara	3:00 PM	1.00	Original Clock In Time: 06:08:00, Edited Clock In Time: 06:08:00, Original Clock Out Time: 15:00:00, Edit Clock Out Time: 14:00:00
					0	Samuel Lawson	8:25 PM	1.00	Original Clock In Time: 06:05:00, Edited Clock In Time: 06:05:00, Original Clock Out Time: 20:25:00, Edit Clock Out Time: 16:00:00
			Relative Edit Punches Total:					**3.00**	
			Reopen Check Count						

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Samuel Lawson								
		12/2/2022							
			Reopen Check Count						
				1.00	400097	Samuel Lawson	11:28 AM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 1, Amount: 7.49, Number of Items: 2, Amount: 0.00, Check ReOpen Time: 11:28:22, Check Close Time: 11:28:29.
			Reopen Check Count Total:					**1.00**	
		12/23/2022							
			Relative Edit Punches						
				1.01	0	Paulina Lara	9:39 AM	1.00	Original Clock In Time: 09:39:00, Edited Clock In Time: 06:15:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		12/24/2022							
			Relative Edit Punches						
				2.02	0	Jesus Pascual	1:30 PM	1.00	Original Clock In Time: 08:07:00, Edited Clock In Time: 08:07:00, Original Clock Out Time: 13:30:00, Edit Clock Out Time: 13:00:00
					0	Avery Hutchins	4:06 PM	1.00	Original Clock In Time: 10:05:00, Edited Clock In Time: 10:05:00, Original Clock Out Time: 15:55:00, Edit Clock Out Time: 16:00:00
			Relative Edit Punches Total:					**2.00**	
		1/1/2023							
			Relative Edit Punches						
				2.02	0	Jasmine Ziff	8:11 AM	1.00	Original Clock In Time: 08:10:00, Edited Clock In Time: 07:56:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
					0	Jesus Pascual	8:18 AM	1.00	Original Clock In Time: 08:14:00, Edited Clock In Time: 07:50:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**2.00**	
		1/16/2023							

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Samuel Lawson								
		1/16/2023							
			Relative Edit Punches						
				1.01	0	Samuel Lawson	3:32 PM	1.00	Original Clock In Time: 15:32:00, Edited Clock In Time: 15:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
	Saphira Allen								
		11/2/2022							
			Relative Edit Punches						
				1.01	0	Dominic Brasher	7:04 PM	1.00	Original Clock In Time: 19:04:00, Edited Clock In Time: 15:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		11/3/2022							
			Relative Edit Punches						
				1.01	0	Kellie Skyles	9:08 PM	1.00	Original Clock In Time: 21:08:00, Edited Clock In Time: 14:03:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
			Reopen Check Count						
				1.00	400538	Saphira Allen	5:25 PM	1.00	Adjustment Type: Order Items, Number of Items: 1, Amount: 0.00, Check ReOpen Time: 17:25:07, Check Close Time: 17:25:47.
			Reopen Check Count Total:					**1.00**	
		11/4/2022							
			Relative Edit Punches						
				1.01	0	Saphira Allen	1:52 PM	1.00	Original Clock In Time: 11:46:00, Edited Clock In Time: 13:52:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Saphira Allen								
		11/4/2022							
			Reopen Check Count						
				1.00	10033	Saphira Allen	1:11 PM	1.00	Adjustment Type: Voids, Apply Payment, Order Items, Number of Voids: 1, Amount: 10.19, Number of Payments: 1, Amount: 3.29, Number of Items: 9, Amount: 13.48, Check ReOpen Time: 13:09:56, Check Close Time: 13:11:07.
			Reopen Check Count Total:					**1.00**	
		11/11/2022							
			Reopen Check Count						
				1.00	20029	Saphira Allen	3:51 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 7.49, Check ReOpen Time: 15:50:54, Check Close Time: 15:51:03.
			Reopen Check Count Total:					**1.00**	
		11/12/2022							
			Reopen Check Count						
				1.00	20029	Saphira Allen	3:48 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 4.59, Check ReOpen Time: 15:48:02, Check Close Time: 15:48:09.
			Reopen Check Count Total:					**1.00**	
		11/15/2022							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	8:31 PM	1.00	Original Clock In Time: 12:02:00, Edited Clock In Time: 12:02:00, Original Clock Out Time: 20:30:00, Edit Clock Out Time: 19:05:00
			Relative Edit Punches Total:					**1.00**	
		11/16/2022							
			Relative Edit Punches						
				1.01	0	Miriam Arteaga Ochoa	8:35 PM	1.00	Original Clock In Time: 05:45:00, Edited Clock In Time: 05:45:00, Original Clock Out Time: 20:34:00, Edit Clock Out Time: 16:15:00

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Saphira Allen								
		11/16/2022							
			Relative Edit Punches Total:					**1.00**	
		11/19/2022							
			Relative Edit Punches						
				1.01	0	Dominic Brasher	8:53 PM	1.00	Original Clock In Time: 20:52:00, Edited Clock In Time: 15:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		11/22/2022							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	7:10 PM	1.00	Original Clock In Time: 12:09:00, Edited Clock In Time: 12:00:00, Original Clock Out Time: 19:02:00, Edit Clock Out Time: 19:02:00
			Relative Edit Punches Total:					**1.00**	
			Reopen Check Count						
				1.00	20121	Saphira Allen	7:29 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 6.69, Check ReOpen Time: 19:29:05, Check Close Time: 19:29:08.
			Reopen Check Count Total:					**1.00**	
		11/30/2022							
			Relative Edit Punches						
				1.52	0	Saphira Allen	4:06 PM	1.00	Original Clock In Time: 07:13:00, Edited Clock In Time: 13:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
					0	Samuel Lawson	4:30 PM	1.00	Original Clock In Time: 06:18:00, Edited Clock In Time: 06:18:00, Original Clock Out Time: 11:34:00, Edit Clock Out Time: 12:00:00
			Relative Edit Punches Total:					**2.00**	
			Reopen Check Count						

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Saphira Allen								
		11/30/2022							
			Reopen Check Count						
				1.00	10033	Saphira Allen	1:54 PM	1.00	Adjustment Type: Promos, Voids, Apply Payment, Order Items, Number of Promos: 1, Number of Voids: 1, Amount: 7.49, Number of Payments: 1, Amount: 6.10, Number of Items: 3, Amount: 0.00, Check ReOpen Time: 13:53:04, Check Close Time: 13:54:56.
			Reopen Check Count Total:					**1.00**	
		12/7/2022							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	8:53 PM	1.00	Original Clock In Time: 12:06:00, Edited Clock In Time: 12:06:00, Original Clock Out Time: 20:52:00, Edit Clock Out Time: 19:00:00
			Relative Edit Punches Total:					**1.00**	
		12/13/2022							
			Reopen Check Count						
				1.00	400342	Saphira Allen	6:27 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 5.19, Check ReOpen Time: 18:26:59, Check Close Time: 18:27:07.
					400348	Saphira Allen	7:00 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 5.19, Check ReOpen Time: 19:00:14, Check Close Time: 19:00:21.
			Reopen Check Count Total:					**2.00**	
		12/15/2022							
			Relative Edit Punches						
				2.02	0	Paulina Lara	5:28 PM	1.00	Original Clock In Time: 05:51:00, Edited Clock In Time: 05:51:00, Original Clock Out Time: 17:27:00, Edit Clock Out Time: 14:00:00
					0	Naaman Yarbrough	6:09 PM	1.00	Original Clock In Time: 12:02:00, Edited Clock In Time: 12:02:00, Original Clock Out Time: 17:52:00, Edit Clock Out Time: 18:00:00
			Relative Edit Punches Total:					**2.00**	
		12/16/2022							

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Saphira Allen								
		12/16/2022							
			Relative Edit Punches						
				1.01	0	Saphira Allen	9:21 PM	1.00	Original Clock In Time: 14:16:00, Edited Clock In Time: 14:00:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00
			Relative Edit Punches Total:					**1.00**	
		12/17/2022							
			Relative Edit Punches						
				1.01	0	Starr Mckinnis	9:22 PM	1.00	Original Clock In Time: 07:43:00, Edited Clock In Time: 07:43:00, Original Clock Out Time: 21:22:00, Edit Clock Out Time: 15:00:00
			Relative Edit Punches Total:					**1.00**	
		12/20/2022							
			Reopen Check Count						
				1.00	400352	Saphira Allen	3:29 PM	1.00	Adjustment Type: Order Items, Number of Items: 3, Amount: 0.00, Check ReOpen Time: 15:29:05, Check Close Time: 15:29:31.
			Reopen Check Count Total:					**1.00**	
		12/28/2022							
			Relative Edit Punches						
				1.01	0	Naaman Yarbrough	8:49 PM	1.00	Original Clock In Time: 12:02:00, Edited Clock In Time: 12:00:00, Original Clock Out Time: 20:48:00, Edit Clock Out Time: 19:05:00
			Relative Edit Punches Total:					**1.00**	
		12/31/2022							
			Relative Edit Punches						
				1.01	0	Avery Hutchins	8:30 PM	1.00	Original Clock In Time: 10:00:00, Edited Clock In Time: 10:00:00, Original Clock Out Time: 20:30:00, Edit Clock Out Time: 16:00:00
			Relative Edit Punches Total:					**1.00**	

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Saphira Allen								
		1/7/2023							
			Reopen Check Count						
				1.00	10083	Saphira Allen	2:49 PM	1.00	Adjustment Type: Voids, Apply Payment, Order Items, Number of Voids: 1, Amount: 2.49, Number of Payments: 1, Amount: 0.50, Number of Items: 1, Amount: 2.99, Check ReOpen Time: 14:48:45, Check Close Time: 14:49:49.
			Reopen Check Count Total:					**1.00**	
		1/13/2023							
			Relative Edit Punches						
				1.01	0	Destiny Roberts	9:21 PM	1.00	Original Clock In Time: 08:00:00, Edited Clock In Time: 08:00:00, Original Clock Out Time: 21:21:00, Edit Clock Out Time: 14:00:00
			Relative Edit Punches Total:					**1.00**	
			Reopen Check Count						
				1.00	10201	Saphira Allen	5:01 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 5.19, Check ReOpen Time: 17:01:33, Check Close Time: 17:01:37.
			Reopen Check Count Total:					**1.00**	
	Starr Mckinnis								
		11/4/2022							
			Reopen Check Count						
				1.00	20026	Starr Mckinnis	10:00 AM	1.00	Adjustment Type: Apply Payment, Order Items, Number of Payments: 1, Amount: 2.00, Number of Items: 3, Amount: 1.99, Check ReOpen Time: 09:59:58, Check Close Time: 10:00:16.
			Reopen Check Count Total:					**1.00**	
		11/7/2022							
			Reopen Check Count						
				1.00	20073	Starr Mckinnis	2:58 PM	1.00	Adjustment Type: Voids, Number of Voids: 2, Amount: 12.38, Check ReOpen Time: 14:58:12, Check Close Time: 14:58:17.

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Starr Mckinnis								
		11/7/2022							
			Reopen Check Count Total:					**1.00**	
		11/11/2022							
			Relative Reopen Check Count						
				1.65	10001	Starr Mckinnis	5:50 AM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 3.29, Check ReOpen Time: 05:49:34, Check Close Time: 05:50:37.
					10155	Starr Mckinnis	1:38 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 4.59, Check ReOpen Time: 13:38:30, Check Close Time: 13:38:40.
			Relative Reopen Check Count Total:					**2.00**	
			Reopen Check Count						
				1.00	10001	Starr Mckinnis	5:50 AM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 3.29, Check ReOpen Time: 05:49:34, Check Close Time: 05:50:37.
					10155	Starr Mckinnis	1:38 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 4.59, Check ReOpen Time: 13:38:30, Check Close Time: 13:38:40.
			Reopen Check Count Total:					**2.00**	
		11/13/2022							
			Reopen Check Count						
				1.00	400235	Starr Mckinnis	3:24 PM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 2, Amount: 7.58, Number of Items: 3, Amount: 2.49, Check ReOpen Time: 15:24:29, Check Close Time: 15:24:45.
					400235	Starr Mckinnis	3:24 PM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 2, Amount: 7.58, Number of Items: 3, Amount: 2.49, Check ReOpen Time: 15:24:29, Check Close Time: 15:24:45.
			Reopen Check Count Total:					**2.00**	
		11/18/2022							
			Reopen Check Count						

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Starr Mckinnis								
		11/18/2022							
			Reopen Check Count						
				1.00	20035	Starr Mckinnis	10:38 AM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 2.59, Check ReOpen Time: 10:38:32, Check Close Time: 10:38:38.
			Reopen Check Count Total:					**1.00**	
		11/19/2022							
			Reopen Check Count						
				1.00	20028	Starr Mckinnis	12:17 PM	1.00	Adjustment Type: Voids, Number of Voids: 1, Amount: 5.19, Check ReOpen Time: 12:17:31, Check Close Time: 12:17:40.
			Reopen Check Count Total:					**1.00**	
		12/3/2022							
			Reopen Check Count						
				1.00	10107	Starr Mckinnis	2:54 PM	1.00	Adjustment Type: Voids, Number of Voids: 2, Amount: 8.68, Check ReOpen Time: 14:53:59, Check Close Time: 14:54:09.
			Reopen Check Count Total:					**1.00**	
		12/9/2022							
			Deleted Check Out Count						
				2.00	0	Starr Mckinnis	2:12 PM	1.00	Original Checkout Time: 14:03:19, New Checkout Time: 14:12:04, Checkout Drawer: 1
					0	Saphira Allen	8:18 PM	1.00	Original Checkout Time: 14:11:38, New Checkout Time: 20:18:04, Checkout Drawer: 1
			Deleted Check Out Count Total:					**2.00**	
		12/21/2022							
			Relative Edit Punches						
				1.01	0	Starr Mckinnis	6:18 AM	1.00	Original Clock In Time: 06:17:00, Edited Clock In Time: 05:50:00, Original Clock Out Time: 00:00:00, Edit Clock Out Time: 00:00:00

Audit Exceptions By Manager
Detail By Store

Store: 284 - POR - 6th & Yamhill - 10/30/2012

Report Range: 11/1/2022 - 1/19/2023

Store	Manager	Date	Audit Type	Threshold	Check Number	Employee	Time	Value	Description
284 - POR - 6th & Yamhill - 10/30/2012 - 284									
	Starr Mckinnis								
		12/21/2022							
			Relative Edit Punches Total:					**1.00**	
		12/29/2022							
			Reopen Check Count						
				1.00	10021	Starr Mckinnis	10:07 AM	1.00	Adjustment Type: VoidsOrder Items, Number of Voids: 1, Amount: 13.89, Number of Items: 4, Amount: 12.58, Check ReOpen Time: 10:07:04, Check Close Time: 10:07:18.
			Reopen Check Count Total:					**1.00**	
		1/16/2023							
			Reopen Check Count						
				1.00	400010	Olo Cashier	12:00 AM	1.00	Adjustment Type: Check ReOpen Time: 11:24:40, Check Close Time: 00:00:10.
			Reopen Check Count Total:					**1.00**	

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

POTBELLY SANDWICH SHOP, Employer, and **RESTAURANT WORKERS OF PORTLAND,** Petitioner.	Case No.: 19-RC-310218

MOTION TO PRECLUDE PURSUANT TO 29 C.F.R. § 102.66(d)

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Attorneys for Employer Potbelly Sandwich Works, LLC

Pursuant to the National Labor Relation Board's Rules and Regulations Section 102.66(d) (hereinafter, "Rule 102.66"), the Employer, Potbelly Sandwich Works, LLC ("Potbelly" or the "Employer") moves to exclude Petitioner Restaurant Workers of Portland (the "Petitioner") from raising issues, presenting evidence, or litigating arguments in the above-referenced case in any way, particularly in the form of submitting a post-hearing brief.

I. STATEMENT OF FACTS

On January 12, 2023, Petitioner filed a representation petition to certify a bargaining unit comprised of all full-time and part-time employees at the Potbelly store located at 802 SW 6th Avenue, Portland, Oregon 97204, including the Shift Leader classification.

On January 25, 2023, the Employer filed its Statement of Position setting out its position that the Shift Leader classification includes supervisors, as defined by Section 2(11) of the National Labor Relations Act ("Act"), that must be excluded from an appropriate bargaining unit.

Before noon Pacific Standard Time on January 30, 2023, Petitioner should have filed a Responsive Statement of Position pursuant National Labor Relations Board ("Board") Rule Section 102.63(b). Additionally, the Petition was notified in the Regional Director's Notice of Representation Hearing of the requirement to file a Responsive Statement of Position. Specifically, Petitioner was informed:

> YOU ARE HEREBY NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations… 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 that are received by them no later than **noon** Pacific on January 30, 2023.

(Emphasis in original.)

Petitioner, in spite of being on notice, did not just fail to meet the deadline; Petitioner failed

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to file a Responsive Statement of Position at all.

On February 2, 2023, a hearing on the issues Employer raised in its Statement of Position was conducted in front of Hearing Officer Emily Wiant. The Regional Director applied the rule of preclusion required by Rule 102.66 at the hearing, and the Regional Director must continue to apply the preclusion rule to any argument submitted in the way of a post-hearing brief from the Petitioner. In the event Petitioner files a post-hearing brief, the Regional Director must reject it in order to comply with Rule 102.66.

II. ARGUMENT

A. Rule 102.66 Is a Bright Line Rule and Must Be Applied

Rule 102.66 provides in relevant part:

> 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[.]

29 C.F.R § 102.66(d).

The Board has held that Rule 102.66 is a bright line rule that must be strictly applied. "In enacting the amended Rules, the Board deliberately created bright-light provisions and consequences for noncompliance. These provisions include the service requirements for the voter list in 102.62(d) and for the Statement of Position in 102.66(b) and (d)." *URS Federal Servs., Inc.*, 365 NLRB No. 1 at 2 (2016). Further, the Board has emphasized the importance of strictly adhering to Rule 102.66, ". . . we expect regional directors to enforce these service requirements [Rule 102.62(d) and Rule 102.66(b)] whether an employer or union has failed to meet so that *all* parties take their obligations seriously under the amended Rules." *Id.*

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This bright line rule is consistently applied on both sides with an even heavy-handedness. *See, e.g.*, *Brunswick Bowling Products, LLC*, 364 NLRB No. 96, slip op. at 2 (2016) (holding that the union's Statement of Position was untimely served on the other parties and the union did not file a motion for extension of time to file and serve its Statement of Position, nor did it provide an explanation for failing to serve its Statement of Position in a timely manner); *Ikea Distribution Services, Inc.*, 370 NLRB No. 109 (2021) (precluding the employer from raising any issues concerning the appropriateness of the petitioned-for unit for failing to timely serve its Statement of Position); *Starbucks Corporation*, Case 03-RC-289785, Order Granting Motion to Preclude and Denying Motion to Bar Evidence (Feb. 18, 2022) (precluding the employer from submitting any evidence because the employer failed to timely file and serve its Statement of Position).

The Regional Director must follow unwavering Board precedent and preclude Petitioner from presenting any argument.

B. Petitioner Is Precluded from Submitting a Post-Hearing Brief

Rule 102.66 precludes any party from "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." 29 C.F.R §102.66(d). Rule 102.66(h) permits parties "to submit a brief to the Regional Director" outlining its arguments based on the stenographic report of the hearing. 29 C.F.R §102.66(h).

A post-hearing brief is, by definition, argument. As described by the Board, "Post-hearing briefs further clarify the issues presented and opposing views taken in pre-hearing statements, and they do so with the additional guidance of reference to specific case law and to specific pages in the record that support a party's position." Representation Case Procedures, 86 FR 69524-01 (December 18, 2019). If the Regional Director were to consider Petitioner's post-hearing brief, it

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would be permitting Petitioner to present argument within the meaning of Rule 102.66. Petitioner is precluded from doing so because of its failure to file a Responsive Statement of Position. Therefore, consideration of Petitioner's post-hearing brief would be reversible error.

III. CONCLUSION

Petitioner cannot be allowed to present arguments in the form of a post-hearing brief for the reasons set forth above. The Employer respectfully requests that the Regional Director issue an order preventing Petitioner from submitting a post-hearing brief.

Date: February 13, 2023

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: *s/ Kyle T. Abraham*

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2023 a true and correct copy of the foregoing was served via email on the following:

Mark Medina
Organizer
Restaurant Workers of Portland
2249 E. Burnside Street
Portland, OR 97214
503RWP@gmail.com

By: *s/ Kyle T. Abraham*
Kyle T. Abraham

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

POTBELLY SANDWICH WORKS, LLC, Employer, and **RESTAURANT WORKERS OF PORTLAND,** Petitioner.	Case No. 19-RC-310218

EMPLOYER'S POST-HEARING BRIEF

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COMES NOW counsel for Potbelly Sandwich Works, LLC ("Potbelly" or the "Employer") and submits this Post-Hearing Brief pursuant to Section 102.66(h) of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board") and consistent with General Counsel's Memorandum 20-07 ("GC Memo 20-07") and 20-10 ("GC Memo 20-10").

I. STATEMENT OF THE CASE

On January 11, 2023, the Restaurant Workers of Portland (the "Union"), filed a representation petition ("Petition") in Case No. 19-RC-310218 seeking certification as the exclusive bargaining representative for the following unit at Potbelly's shop located 802 SW 6th Avenue, Portland Oregon 97204 (the "Yamhill store"):

Employees Included: Full-time and part-time employees, including shift leads.

Employees Excluded: Supervisors, managers, and guards.

Bd. Ex. 1(a)).

The Employer opposes Petitioner's petitioned-for unit because the Shift Leader classification is a supervisor under Section 2(11) of the National Labor Relations Act (the "Act"). The Shift Leader classification possesses and exercises the authority to assign and responsibly direct work, to reward employees, and to discipline employees, all using independent judgment in the interest of the Employer. For these reasons, the Shift Leader must be excluded from the unit.

At the hearing, Potbelly presented testimony from Nichole Shaughnessy ("Shaughnessy"), Regional Director of the Region, including Portland, Oregon; Miriam Arteaga ("Arteaga"), General Manager of the Yamhill store; and Starr McKinnis ("McKinnis"'), Assistant General Manager of the Yamhill store. All witnesses testified about the supervisory tasks performed by Shift Leaders at the Portland store. Arteaga and McKinnis both testified they had worked as Shift Leaders and also testified about the supervisory tasks they performed as Shift Leaders. Potbelly presented a number of exhibits to illustrate its position that the Shift Leader classification includes supervisors within the meaning of the Act.

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The Union failed to file a Responsive Statement of Position, as required by Section 102.63(b) of the Rules and Regulations of the Board. Accordingly, the Union was and is precluded from presenting any evidence related to any issue, cross-examining any witness, and presenting any argument in accordance with Section 102.66(d) of the Rules and Regulations of the Board. Accordingly, the evidence presented by Potbelly is not in dispute.

II. ISSUE STATEMENT

Whether the Shift Leader classification include 2(11) supervisors within the meaning of the Act.

III. STATEMENT OF FACTS[1]

A. Employer's Operations

Potbelly is a quick-service restaurant with over 390 shops across the United States. The Petition involves only the Yamhill store. Bd. Ex. 1(a). The Yamhill store is open to customers seven days a week from 7:00 AM to 8:00 PM. Tr. 15. Employees are scheduled from 6:00 AM to 9:00 PM. Tr. 15.

Relevant to the Petition, the Yamhill store has a total of eight Associates, two Certified Trainers, three Shift Leaders, and two managers. Tr. 15. Miriam Arteaga is the General Manager and Starr McKinnis is the Assistant Manager. Er. Ex. 1. The Shift Leaders: Samuel Lawson, Saphira Allen and Naaman Yarbrough. Er. Ex. 1. The Certified Trainers and Associates report to the Shift Leaders. Er. Ex. 1. The Yamhill store operates with between two to ten employees at a time, depending on average foot traffic and sales volume. Tr. 17. The Yamhill store Associates and Certified Trainers work at various stations during each shift, each with different duties and

[1] References to the hearing transcript will be referred to as "Tr.," followed by the appropriate page number(s). References to exhibits introduced into evidence at the hearing are designated by the exhibit number, preceded by "Jt." for joint exhibits, "Bd." for the Board's exhibits, and "Er." for the Employer's exhibits.

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responsibilities. Tr. 17. There are ten work stations at the Yamhill Store: fronter, cash, shakes/soup, load 1, load 2, dress 1, dress 2/combo, back load, back dress, receiver/assembler. Er. Ex. 2 at 1.

B. Procedural History

On January 12, 2023, Petitioner filed a representation petition to certify a bargaining unit comprised of all full-time and part-time employees, including Shift Leader position. Bd. Ex. 1(a). On January 25, 2023, the Employer filed its Statement of Position indicating that the Shift Leader classification includes Section 2(11) supervisors and that this classification should be excluded from the bargaining unit. Bd. Ex. 3. With its Statement of Position, the Employer also filed an employee list for the Yamhill store that lists the current employees and their job classification. *Id.* The Petitioner failed to file a Responsive Statement of Position pursuant to the Regional Director's Notice of Representation Hearing.

IV. PETITIONER IS PRECLUDED FROM SUBMITTING A POST-HEARING BRIEF

Petitioner failed to timely serve its Responsive Statement of Position on the Employer as required by NLRB Rule 102.63(b). Petitioner was informed of the rule by the Regional Director's February 2, 2023 Notice of Representation Hearing. Pursuant to Rule 102.66(d), Petitioner is "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…or to place in dispute in response to another party's Statement of Position or response…" any issue which it failed to timely raise in its Statement of Position. *See Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1 (2017).

Because Petitioner did not comply with Rule 102.63(b), under Rule 102.66(d), Petitioner is precluded from raising, litigating, presenting evidence concerning, cross-examining witnesses concerning, or arguing concerning any of the issues it should have raised in its Responsive

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Statement of Position, which was not timely filed and served. *See, e.g. Brunswick Bowling Products, LLC*, 364 NLRB No. 96, slip op. at 2 (2016) (holding that the union's Statement of Position was untimely served on the other parties and the union did not file a motion for extension of time to file and serve its Statement of Position, nor did it provide an explanation for failing to serve its Statement of Position in a timely manner).

Notably, as discussed in *Brunswick Bowling Products, LLC*, Section 102.66(d) does not require that prejudice to another party be shown to have resulted from a failure to comply with the Statement of Position requirement in order for preclusion to be enforced. *Id.*

In accordance with Section 102.66(h), a party may submit "oral arguments and brief." By definition, a post-hearing brief is argument. The Regional Director applied the rule of preclusion required by Section 102.66(d) at the hearing, and the Regional Director must apply the preclusion rule to any argument submitted by way of any post-hearing brief from the Petitioner.

Further, the additional evidence included in the Petitioner's post-hearing brief constitutes "presenting evidence" within the meaning of Rule 102.66 and provides an independent basis on which the Regional Director should not consider Petitioner's post-hearing brief. By submitting this new evidence, the Petitioner is flouting the preclusion order from the Regional Director. The Petitioner's post-hearing brief, and the new evidence included within it, should not be considered.

V. LEGAL ANALYSIS OF SUPERVISORY STATUS

A. The Shift Leader is a Supervisor as defined in Section 2(11) of the National Labor Relations Act

Section 2(11) of the Act provides:

> The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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The Board interprets Section 2(11) in the disjunctive, such that the possession of any one of the enumerated authorities establishes supervisory status. *American Commercial Barge Line Co.*, 337 NLRB 1070 (2002); *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000).

The Board has held:

> [I]ndividuals are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 supervisory functions (e.g., "assign" and "responsibly to direct") listed in Section 2(11); (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and (3) their authority is held "in the interest of the employer." Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same.

The Shift Leader holds and exercises Section 2(11) authority. Specifically, the Employer's Shift Leader effectively assigns and responsibly directs work, rewards and disciplines employees, all using independent judgment in the interest of the Employer.

B. The Shift Leader Spends a Regular and Substantial Portion of their Workweek in a Supervisory Position

Employees who spend a "regular and substantial" part of each workday or workweek performing supervisory functions are excluded from the bargaining unit. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 694 (2006). The Board has not identified a strict numerical definition of "regular and substantial" but has found supervisory status "where the individuals have served in a supervisory role for at least 10-15 percent of their total work time." *Id.* The evidence must establish that the supervisory authority is more than isolated, infrequent, or sporadic. *Peacock Productions of NBC Universal Media, LLC*, 364 NLRB No. 104. Slip op. at 3-4 (2016).

From approximately 3:00 PM until 8:00 PM every day (Monday to Sunday), the Shift Leaders are the highest-ranking employee on duty and designated as the Manager in Charge. Tr. 63; Er. Ex. 4. As will be explained in further detail below, whoever is designated as the "Manager in Charge" of the shift is the designated first point of contact for questions to a supervisor, but an

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individual in a Manager in Charge role does not replace the authority of a Shift Leader when exercising supervisory duties, including assigning Associates and Certified Trainers to stations, to line duties, to cleaning duties, and to opening, post-peak, and closing duties.

The Shift Leaders at the Yamhill store spend a great deal more than 10-15% of their workday in a supervisory role. The Yamhill store is open for business 15 hours every day from 6:00 AM to 9:00 PM, and Shift Leaders hold the responsibility of Manager in Charge for approximately eight of those hours, or 53%, which is much greater than the requisite 10-15% under the Act. Shift Leader Saphira Allen is the Manager in Charge for five of her five shifts (100%); Shift Leader Naaman Yarbrough is the Manager in Charge for two of his five shifts (40%); and Shift Leader Samuel Lawson is the Manager in Charge for one of his five shifts (20%). Tr. 93; Er. Ex. 4. All three Shift Leaders are Managers in Charge for more than the requisite 10-15%. In addition, as discussed in more detail below, even when Shift Leaders are not the designated Manager in Charge, a Shift Leader still exercises supervisory authority by assigning tasks, rewarding employees and adjusting timecards.

Although Shift Leaders occasionally work shifts with managers Arteaga and McKinnis, they work as the Manager in Charge even when Arteaga and McKinnis are present in the store. McKinnis testified that she is the Manager in Charge only *one* day per week. Tr. 77. McKinnis herself worked as a Shift Leader for six months, and testified that when she was a Shift Leader, she was the Manager in Charge five days out of the week. Tr. 91. Arteaga testified that when she is working with a Shift Leader, she will "hand off the reins to my shift leader" "regularly." Tr. 109. The evidence establishes that Shift Leaders spend a "regular and substantial" part of their workday as supervisors.

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C. Shift Leaders Possess and Exercise Supervisory Authority under Section 2(11)

1. Shift Leaders Assign Associates Using Independent Judgment in the Interest of the Employer.

For purposes of Section 2(11), the term "assign" refers to "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006). To exercise independent judgment, the supervisory authority "must be independent, it must involve a judgment, and the judgment must involve a degree of discretion that rises above routine or clerical." *Oakwood Healthcare, Inc.*, 348 NLRB at 693. If a putative supervisor uses their professional or technical experience in carrying out a Section 2(11) function, they are using their independent judgment. *Id.* at 692; s*ee also NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001) (reversing Board's determination that nurses do not exercise independent judgment because they use their ordinary professional judgment in carrying out their duties).

a. Shift Leaders Assign Associates to Work Stations Using Independent Judgment in the Interest of the Employer.

When a putative supervisor assigns an employee to a certain location or department, they are "assigning" within the meaning of Section 2(11). As explained above, the Yamhill store has different stations comprised of different duties and responsibilities. At the beginning of each shift, a Shift Leader, serving as the Manager in Charge, verbally assigns each Associate[2] to one of the stations at the Yamhill store. Tr. 53, 78. Shift Leaders make these assignments for "every single employee," "every day," "multiple times throughout the day." Tr. 53, 78. In making the determination of which Associate to assign to which station, Shift Leaders take a number of factors

[2] For the sake of clarity, for the remainder of the brief, reference to "Associates" encompasses the positions of Associate and Certified Trainer, as the Shift Leader exercises the same supervisory authority with respect to both positions.

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into account. Shift Leaders will observe the Associates' skills, comfortability level and communication when working at a station. Tr. 52, 79, 80. As Arteaga testified, "the Shift Leaders are in charge of knowing what associates know what stations." Tr. 113. Shift Leaders, using their professional judgment about the Associates' abilities and skill level, will assign Associates to the various stations with the goal of running a smooth shift. Tr. 52, 79, 80. If a new Associate is working, Shift Leaders will rotate the Associate on different stations, taking into account what stations for which they are trained to ensure they receive experience on each station during each shift. Tr. 79, 110. The Shift Leader also will reassign Associates to different stations throughout the shift, depending on the store environment – for example, if the shift is slow, someone has not shown up for work, or there's a unique need that has arisen during the shift. Tr. 54, 114. Shift Leaders reassign stations multiple times throughout the shifts every day. Tr. 54, 82, 114. Shift Leaders can do this even when they are not designated as the Manager in Charge. Tr. 98. The Shift Leaders do not have any guidelines or advice on how to assign Associates from the corporate office, nor do they need to seek approval from anyone else. Tr. 52-53, 81. These assignments are made using the Shift Leaders' independent judgment. *See Oakwood Healthcare, Inc.*, 348 NLRB at 692 (holding that independent judgment was established where charge nurses assigned tasks based on particular nurses' skills and abilities as well as patient conditions).

b. Shift Leaders Assign Associates to Line Duties Using Independent Judgment in the Interest of the Employer.

In addition to assigning overall stations to Associates, Shift Leaders assign line duties to each associate every shift. Tr. 29. "Line duties" refers to various tasks to maintain the smooth operation and cleanliness of each station and include, among other things, restocking stations, cleaning stations, and pulling out stations to clean. Tr. 29. Associates are not simply assigned to the line duty that corresponds with the station they're working; the Shift Leader uses their independent judgment to assign different duties to Associates based on their understanding of each

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Associate's knowledge, skill set, training level, and productivity. Tr. 30-31. These assignments are made "every day[,] throughout the day" and are not approved by anyone else. Tr. 30-31. Shift Leaders can assign duties to Associates even when they're not the designated Manager in Charge. Tr. 98.

c. Shift Leaders Assign Associates Opening, Post-Peak, and Closing Duties Using Independent Judgment in the Interest of the Employer.

Shift Leaders also assign tasks to Associates at regular intervals: at opening, post-peak (between 2:00 PM and 5:00 PM) and closing. Tr. 33. At these times, the Shift Leader, as the Manager in Charge, evaluates the store and determines what tasks need to be completed in order for the next shift to run smoothly. Tr. 34. The Shift Leader will assign the tasks that need to be completed to Associates. Tr. 34. The Shift Leader inspects various areas of the store, which are listed on a checklist, and determines if further work needs to be done in that area before the next shift. Er. Exs. 5, 6, 7; Tr. 34, 117. For example, after the lunch rush, the Shift Leader will inspect the exterior patio and determine whether it needs to be cleaned before the dinner shift. Tr. 35. If they determine that it needs to be cleaned, they will assign an Associate to clean it based on their observation and assessment of the Associates' skills and capabilities, speed, knowledge and training. Tr. 35, 84, 85-86. Shift Leaders prioritize these duties based on their determination of what will help the store operate the best way possible; each Shift Leader can prioritize differently – it is left to their discretion as to what is the most crucial task. Tr. 94-95. This was displayed at the hearing; McKinnis said she prioritized food and the line first, while Arteaga said her first priority was what the customer sees. Tr. 94, 115.

The Shift Leader makes these assignments "every day," "multiple times throughout the day." Tr. 84. The Shift Leader receives no guidance or direction on how to make these assignments and no one else approves them. Tr. 36. Although there are some shifts where the Assistant Manager or General Manager is the Manager in Charge and assigns these tasks, the

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assignment of closing tasks and completion of the closing checklist always is done by a Shift Leader. Tr. 43-44; Er. Ex. 4.

d. Shift Leaders Assign Associates Various Ad Hoc Duties Using Independent Judgment in the Interest of the Employer.

The Shift Leader, as the Manager in Charge, also assigns various duties to Associates throughout a shift based on their determination of what is necessary to keep the store operating efficiently. Tr. 27-28. These tasks can range from cleaning the windows to stocking stations to preparing food. Tr. 27. The Shift Leader assigns Associates these duties themselves, without any direction or guidance from Potbelly, or any approval from the Assistant Manager or General Manager. Tr. 28; Tr. 31. These assignments happen "throughout the entire shift, often" and "every day." Tr. 28-29.

In addition to the cleaning tasks that arise daily, Shift Leaders assign Associates to more infrequent tasks such as deep cleaning the vents or running to another store to pick up more product. Tr. 130. Shift Leader makes these assignments with total autonomy; they do not seek approval from anyone. Tr. 130.

e. Shift Leaders Have Authority Over Associates' Schedules, Including Sending Associates Home, Determining when Associates Can Take Breaks and Editing Associates' Time Cards.

The authority to "assign" under Section 2(11) includes the authority to assign an employee to a time, such as a shift or overtime period. *Oakwood Healthcare, Inc.*, 348 NLRB at 689. Shift Leaders exercise this authority in a variety of ways. First, Shift Leaders, as the Managers in Charge, determine when Associates take their breaks throughout their shifts, depending on how busy the shop is or what tasks need to be completed. Tr. 55. Shift Leaders also have the authority to send Associates or Certified Trainers home if the shift is slow. Tr. 101-102, 132. Although Potbelly has an internal metric that recommends certain staffing levels based on the amount of sales the store is earning, Shift Leaders can use their independent judgment and evaluate what is

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going on in the surrounding environment to stay outside of that staffing metric. Tr. 134, 138. For example, if the store foot traffic is temporarily light but the Shift Leader sees a large number of people at a park across the street, they can choose to ignore the staffing recommendation and keep all Associates at the store for a potential influx of customers. Tr. 138.

It is also Shift Leaders' responsibility to ensure that shifts worked by the Associates are reflected accurately in the Employer's time capturing system. Tr. 47. If the time system does not accurately reflect the hours an Associate worked, the Shift Leader corrects it. Tr. 47-48, 58, 90; Er. Ex. 8 at 5. Shift Leaders adjust Associates' time cards "pretty frequently" – typically once every other day. Tr. 90. Shift Leaders do not need approval by anyone else to correct timecards, and they complete this task even when they're not the Manager in Charge of the shift. Tr. 59, 61. This ability demonstrates that Shift Leaders possess supervisory authority. *See ITT Lighting Fixtures*, 249 NLRB 441 (1980) (finding that group leaders were supervisors based on, among other things, the fact that they verify and initial employees' time cards).

2. Shift Leaders Responsibly Direct Employees Using Independent Judgment in the Interest of the Employer.

For a putative supervisor to "responsibly direct" employees within the meaning of Section 2(11), the supervisor "directing and performing the oversight of the employee must be accountable for the performance of the task by the other." *Oakwood Healthcare, Inc.* at 692. To establish accountability, "it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary." *Id.* There also must be a "prospect of adverse consequences for the putative supervisor if he/she does not take these steps." *Id.*

Shift Leaders, as the Managers in Charge, responsibly direct the Associates' closing duties. Shift Leaders are held accountable by Arteaga or McKinnis if Associates do not complete their closing duties to according to their standards. Tr. 70-71, 87-88. If Arteaga or McKinnis is not

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satisfied with the work of the Associates, they will have a coaching discussion with the Shift Leader, and if the Shift Leader's conduct still is not corrected, it could lead to a corrective action. Tr. 71. When McKinnis was a Shift Leader, she was held responsible for the work of her Associates through a verbal warning and told that if her Associates' performance didn't improve, it could lead to further discipline. Tr. 104, 105. Although Shift Leaders have never been issued a written warning for this at the Yamhill store, Arteaga does have the authority to do so, and it occurs at other Potbelly stores. Tr. 120.

In *Oakwood Healthcare, Inc.*, the Board found that the charge nurses use their professional and independent judgment when they decide that a catheter needs to be changed and then assign another nurse to change it. 348 NLRB at 692. Similarly here, Shift Leaders determine if the exterior patio needs to be cleaned and assign an Associate to clean it, which demonstrates that they responsibly direct Associates using their independent judgment.

3. Shift Leaders Reward Employees Using Independent Judgment in the Interest of the Employer.

If a putative supervisor has the authority to reward employees, they are supervisors within the meaning of Section 2(11). *See, e.g.*, *Taylor-O-Brien Corp.*, 112 NLRB 1, 12-13 (1955) (finding supervisory status based, in part, on the authority to reward employees with time off). Shift Leaders have the authority to reward an Associate if they determine that an Associate performed exceptionally well, handled a difficult task, or if the Shift Leader had to call in an Associate to work a shift. Tr. 66, 88-89, 136. The Shift Leader can reward by giving free meals, purchasing gift cards to outside stores – commonly Starbucks, Amazon, or iTunes – or giving cash. Tr. 67, 89. The Shift Leader has complete discretion on how to reward Associates; there are no guidelines or instructions from Potbelly. Tr. 89. There also are no limits on how many rewards a Shift Leader can provide to Associates; it could be "every day" of a week. Tr. 68. Shift Leaders do not have to seek approval from anyone to reward Associates in this manner and they do so

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whenever they choose, not only when they are the designated Manager in Charge. Tr. 72, 99, 100. Shift Leaders' ability to reward Associates makes them supervisors within the meaning of the Act.

4. Shift Leaders Discipline Employees Using Independent Judgment in the Interest of the Employer.

To establish the supervisory authority to discipline, asserted disciplinary authority "must lead to personnel action without independent investigation by upper management." *Veolia Transportation Services*, 363 NLRB No. 98, slip op. at 7 (2016) (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007) and *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 669 (2001), *enfd. in pertinent part* 317 F.3d 316 (D.C. Cir. 2003)).

Shift Leaders, as Managers in Charge, can send Associates home if an Associate has demonstrated a behavioral problem. Tr. 102-03, 121. The Employer considers this a form of discipline. Tr. 122. Because Associates are paid hourly, Associates lose their pay when Shift Leaders send them home. Tr. 122. Shift Leaders do not have to seek approval from anyone else to issue this discipline. Tr. 103, 121-22. McKinnis testified that when she was a Shift Leader, she exercised this authority and sent people home. Tr. 103. Therefore, the record establishes that Shift Leaders possess the authority to discipline employees using independent judgment, in the interest of the Employer, under Section 2(11) of the Act. *See Oak Park Nursing Care Center*, 351 NLRB 27, 28 (2007) (finding that because the upper management considered counseling as discipline, the supervisors who counseled the employees were considered supervisors under the Act).

5. The Shift Leader Job Description Further Demonstrates Supervisory Status.

The Shift Leader job description highlights the supervisory status of Shift Leaders. The unrebutted evidence establishes that the job description indicates an accurate description of a Shift Leader's duties. Tr. 25, 75, 109. The job description establishes that the Shift Leader position oversees the restaurant through "coordination of schedules, problem-solving" and "training of employees." Er. Ex. 3. Specifically, the job description provides that essential areas of focus for

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Shift Leaders are to "lead Associates to run great shifts, including assigning tasks (cleaning, line duties, opening/closing duties), provide feedback and training" and "lead Associates to ensure opening/closing/transition duties are completed without supervision." Er. Ex. 3. The job description further provides that Shift Leaders "manage and organize the line and delegate duties to Associates." Er. Ex. 3. The job description therefore accords with the substantial evidence showing that Shift Leaders possess supervisory responsibilities, including authority to assign work and responsibly direct Associates.

6. Other Secondary Indicia Demonstrate the Supervisory Status of Shift Leaders.

Other factors demonstrate that Shift Leaders qualify as supervisors under the Act. For example, Shift Leaders are eligible for health insurance – including medical, dental, and vision – sooner than Associates are eligible for it. Tr. 69. Shift Leaders are eligible for health insurance within 30 days after hire, but Associates are only eligible after one year. Tr. 69-70. Further, the Employer and the managers consider Shift Leaders supervisors. Tr. 23, 76.

VI. ELECTION PREFERENCES

Both the Union and the Employer have expressed a preference for a manual election. The Employer requests the election be scheduled on a Thursday between 3:00 PM and 6:00 PM. The Employer requests that the election be conducted in person at the Hilton Portland Downtown located at 921 SW 6th Avenue, Portland, Oregon 97204. The Employer will ensure compliance with General Counsel Memorandum 20-10 regarding protocols for a manual election.

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VII. CONCLUSION

The Employer's Shift Leaders assign, responsibly direct, reward, and discipline employees at the Yamhill store, all using independent judgment in the interest of the Employer. Consequently, the Region must exclude the Shift Leader from the bargaining unit as a supervisor within the meaning of Section 2(11).

Date: February 14, 2023

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 14, 2023, a copy of the foregoing **EMPLOYER'S POST-HEARING BRIEF** was served via email upon the following:

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Organizer
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s/ Kyle T. Abraham
Kyle T. Abraham

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