LAW360 Employment Authority

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Starbucks Union Effort Hits Turning Point As Petitions Dwindle

By **Beverly Banks**

Law360 (August 9, 2022, 8:13 PM EDT) -- Workers United is entering a new stage of its nationwide unionizing campaign at Starbucks, as the pace of election petition filings has slowed in recent months after reaching its peak in the spring. But the union is planning for more than 200 wins and inching toward that pivotal first contract.

When the union filed three petitions on Aug. 30, 2021, for stores in the Buffalo, New York, area, larger unions doubted that the campaign would be able to notch wins at any of the roughly 9,000 Starbucks-operated stores in the United States, said Fernando Hernandez, a lead organizer with the Western States Regional Joint Board of Workers United.



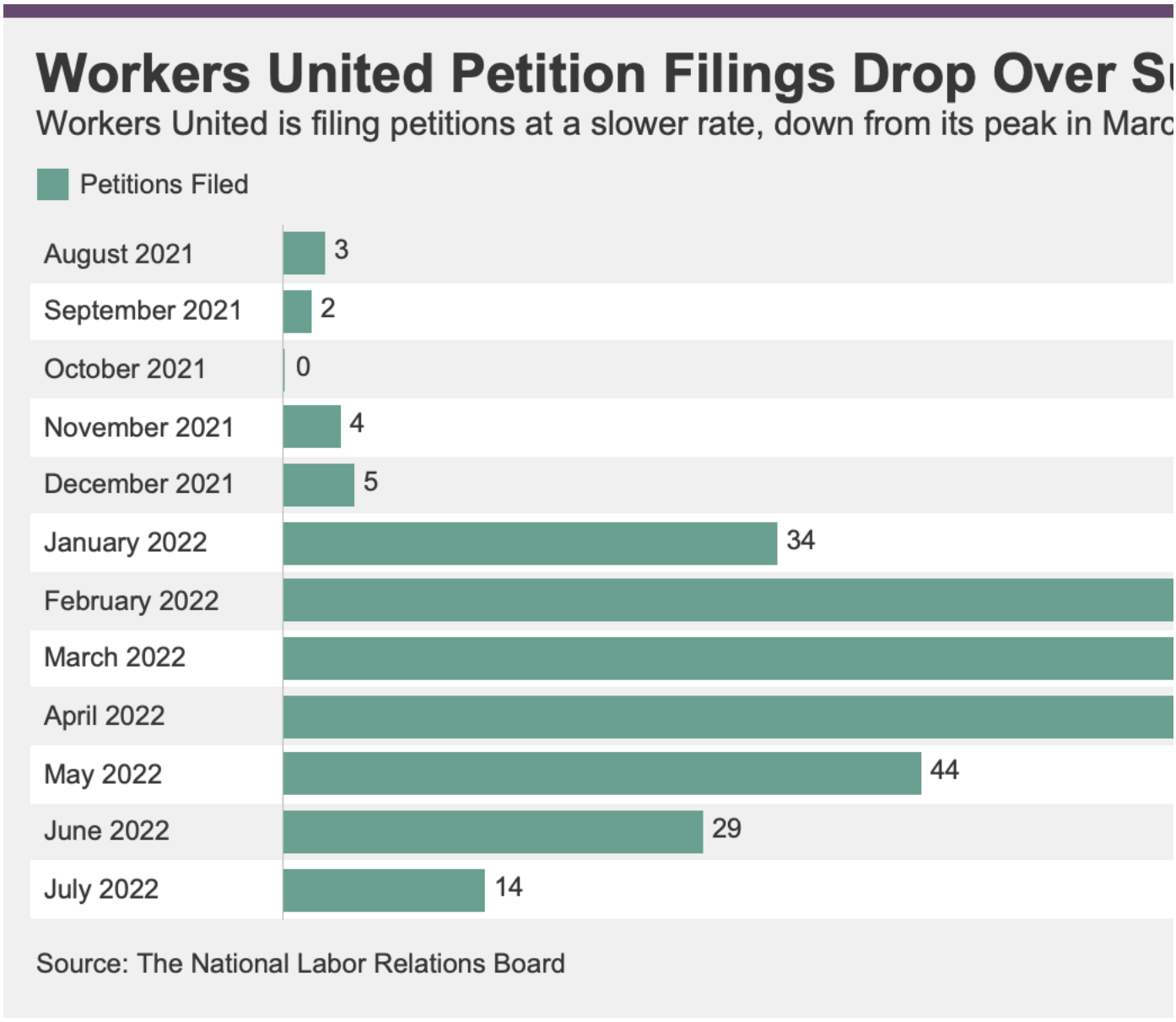
Employees represented by Workers United protest Starbucks' labor practices outside a Boston-area store on July 19. The rate of the union's election petition filings is slowing down after seeing a surge in the spring. (M. Scott Brauer/Bloomberg via Getty Images)

Nearly a year later, the SEIU-backed union has won representation elections at over 200 shops nationwide and organized at more than 330 stores, according to **Law360's Starbucks Unionization Tracker**.

But amid the organizing surge, Workers United and Starbucks have battled **in federal court** and **in proceedings** at the National Labor Relations Board over claims that the coffee chain has illegally fired and suspended workers for their union support. About 70 union activists have been fired since the start of the campaign, according to Workers United.

Union organizers said the overall campaign has slowed in recent months, pointing to the firings and Starbucks' recently announced benefits package for nonunion workers as reasons for the change in pace.

Filings of new petitions dropped from a high of 71 in March to only 14 in July, according to NLRB data compiled by Law360.



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Hernandez described the months of March, April and May as busy for the campaign out West but noted that fewer petitions were filed in June and July. His

organizing efforts are concentrated in California, Arizona, Nevada and New Mexico.

"I think the whole campaign took an impact," Hernandez said. "I mean, there was a time where like, for a month, I was filing petitions, like twice, three times a week."

Petitions for eight stores in the Western region were filed in March, he said, but only two petitions were filed in July.

The West Coast campaign faced what San Francisco State University labor professor John Logan called a "disastrous election" at a Fresno, California, store in July that "should never have gone ahead." The election resulted in a 14-0 loss for Workers United at the Marks Avenue shop, the only unanimous vote against unionizing that the campaign has faced so far.

Starbucks intimidated workers at the store, Hernandez said, but internal issues with the workers and store managers also contributed to the outcome. Hernandez explained that the campaign was mainly communicating with one worker at the store and no one else.

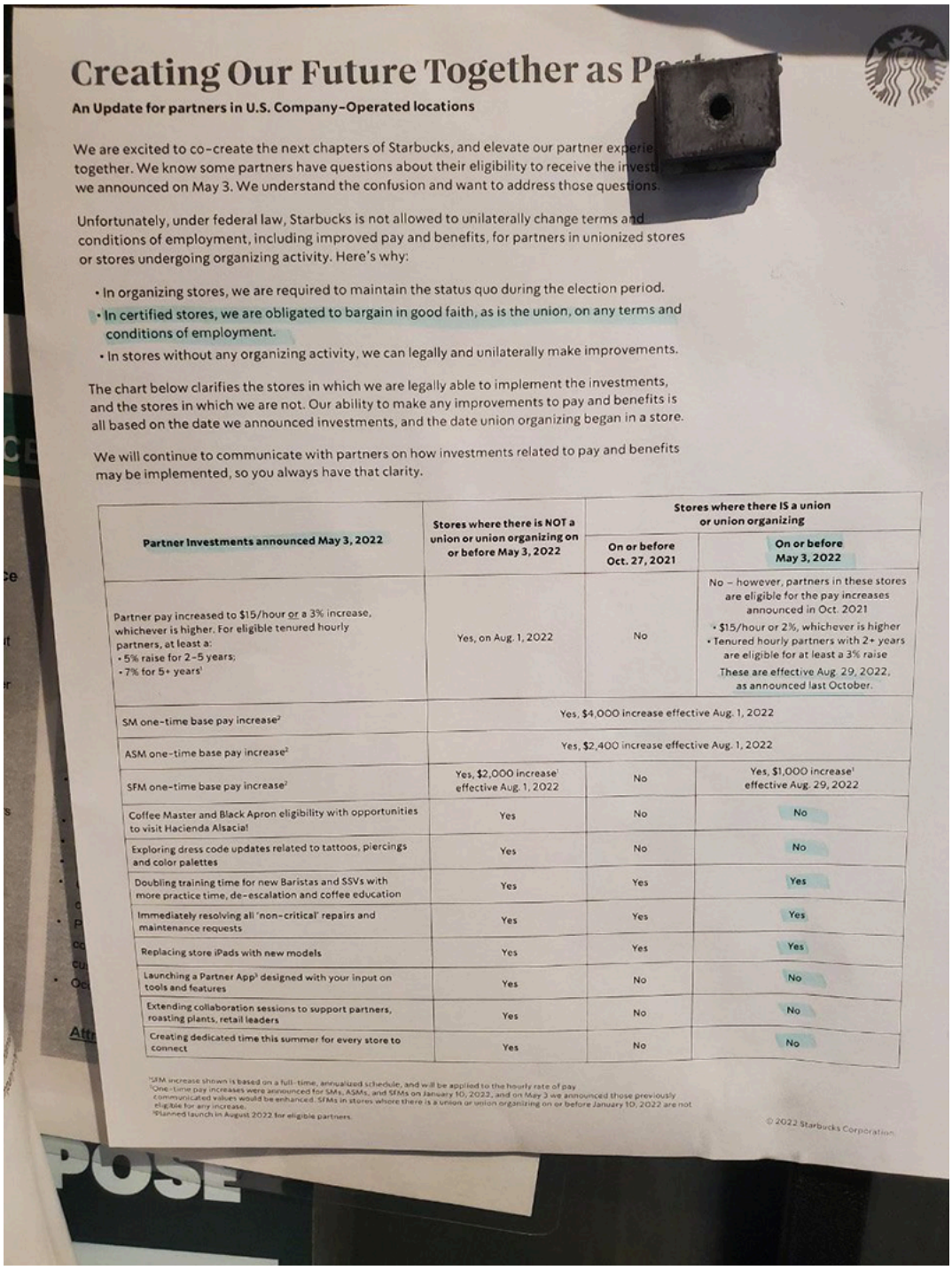
"I think we should have, I guess, seen all the red flags," Hernandez said. "But we took a chance, and that was clearly a loss there."

A person who is involved in the union's campaign and is familiar with its organizing strategy said Workers United has faced more election losses this summer than in the beginning of the unionizing effort, attributing part of the change to the company's benefits announcement in May. The person said the campaign is seeing tighter margins in the vote counts in locations where the union has won.

Although Workers United has won most of the elections it has filed for, the process for obtaining majority support has slowed as baristas are now telling the campaign that they're fearful of organizing, the person said.

Starbucks told workers at nonunion stores in May that they would receive increased wages and other benefits, noting that union stores would have to bargain over the changes.

The company first announced wage hikes in October 2021 when only five stores had taken steps to unionize with Workers United, promising at least $15 per hour for employees by the summer of 2022.



Creating Our Future Together as P

An Update for partners in U.S. Company-Operated locations

We are excited to co-create the next chapters of Starbucks, and elevate our partner experie together. We know some partners have questions about their eligibility to receive the invest we announced on May 3. We understand the confusion and want to address those questions.

Unfortunately, under federal law, Starbucks is not allowed to unilaterally change terms and conditions of employment, including improved pay and benefits, for partners in unionized stores or stores undergoing organizing activity. Here's why:

- In organizing stores, we are required to maintain the status quo during the election period.
- In certified stores, we are obligated to bargain in good faith, as is the union, on any terms and conditions of employment.
- In stores without any organizing activity, we can legally and unilaterally make improvements.

The chart below clarifies the stores in which we are legally able to implement the investments, and the stores in which we are not. Our ability to make any improvements to pay and benefits is all based on the date we announced investments, and the date union organizing began in a store.

We will continue to communicate with partners on how investments related to pay and benefits may be implemented, so you always have that clarity.

Partner Investments announced May 3, 2022	Stores where there is NOT a union or union organizing on or before May 3, 2022	Stores where there IS a union or union organizing	
		On or before Oct. 27, 2021	On or before May 3, 2022
Partner pay increased to $15/hour or a 3% increase, whichever is higher. For eligible tenured hourly partners, at least a: • 5% raise for 2-5 years; • 7% for 5+ years[1]	Yes, on Aug. 1, 2022	No	No – however, partners in these stores are eligible for the pay increases announced in Oct. 2021 • $15/hour or 2%, whichever is higher • Tenured hourly partners with 2+ years are eligible for at least a 3% raise These are effective Aug. 29, 2022, as announced last October.
SM one-time base pay increase[2]	Yes, $4,000 increase effective Aug. 1, 2022		
ASM one-time base pay increase[2]	Yes, $2,400 increase effective Aug. 1, 2022		
SFM one-time base pay increase[2]	Yes, $2,000 increase[1] effective Aug. 1, 2022	No	Yes, $1,000 increase[1] effective Aug. 29, 2022
Coffee Master and Black Apron eligibility with opportunities to visit Hacienda Alsacia!	Yes	No	No
Exploring dress code updates related to tattoos, piercings and color palettes	Yes	No	No
Doubling training time for new Baristas and SSVs with more practice time, de-escalation and coffee education	Yes	Yes	Yes
Immediately resolving all 'non-critical' repairs and maintenance requests	Yes	Yes	Yes
Replacing store iPads with new models	Yes	Yes	Yes
Launching a Partner App[3] designed with your input on tools and features	Yes	No	No
Extending collaboration sessions to support partners, roasting plants, retail leaders	Yes	No	No
Creating dedicated time this summer for every store to connect	Yes	No	No

[1]SFM increase shown is based on a full-time, annualized schedule, and will be applied to the hourly rate of pay.
[2]One-time pay increases were announced for SMs, ASMs, and SFMs on January 10, 2022, and on May 3 we announced those previously communicated values would be enhanced. SFMs in stores where there is a union or union organizing on or before January 10, 2022 are not eligible for any increase.
[3]Planned launch in August 2022 for eligible partners.

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Starbucks posted notices over the summer about wage and benefits changes for nonunion stores. (Courtesy of Starbucks Workers United)

The coffee chain distributed flyers with a breakdown of the wage changes over the summer, saying that only the paychecks of nonunion workers would reflect the wage and benefits bump on Aug. 1.

In a July 15 letter to Starbucks CEO Howard Schultz, Workers United's international President Lynne Fox waived the union's right to bargain over the higher wages and new benefits. Fox said **during a press conference** on Monday that the company still had not responded to her letter.

A Starbucks spokesperson said in a statement to Law360 that the company can't make unilateral changes in unionized stores under the National Labor Relations Act and must bargain in good faith with Workers United.

"Partners still have access to all Starbucks benefits already in place when the petition was filed, but any changes to wages, benefits and working conditions that Starbucks establishes after that time would not apply to and would have to be reviewed in bargaining," the spokesperson said.

Maggie Carter, a lead organizer in Knoxville, Tennessee, agreed that there has been a nationwide slowdown in organizing since the company announced the new benefits. But she noted that organizing in the South has "been slow from the beginning," and the pace of petitions there has remained the same.

"Starbucks is purposely keeping these benefits away from us, despite us waiving the right to bargain for these benefits," she said.

Carter works at the Merchant Drive shop on I-75, which in the spring became the **first Starbucks store in the South** to unionize. Two other stores in the Knoxville-area have also backed Workers United in recent months.

Despite the lull in petitions overall, Carter expressed optimism that organizing will "pick back up as a result of these benefits being received."

The campaign is "going through a really tough patch," Logan said, adding that this isn't the end of the organizing drive, and it's possible that unionizing could

surge in the future.

"Starbucks has hired exactly the kind of independent minded, self-assured, activist-type barista that has given the union campaign its dynamism, so that is not changing," he said.

But not every barista is the activist type, said MC Floreani, a staff organizer for the Chicago and Midwestern Regional Joint Board of Workers United. Some are career service industry workers who want to improve their working conditions.

Floreani works with stores in Wisconsin, Indiana, Kentucky and Ohio, and said there are "ebbs and flows" in the campaign. She said that the pace of filings doesn't always reflect workers' interest on the ground. In fact, Floreani said there has been an uptick in unionizing interest in the states where she organizes.

"In the areas that I work with, I've been seeing more filings than I did earlier in the campaign," Floreani said.

Catherine Creighton, a former NLRB attorney who now serves as the director of Cornell's Industrial and Labor Relations School for the Buffalo extension, said organizing campaigns can speed up when an "employer goes too far," which pushes workers to be more pro-union. She also co-founded the firm Creighton Johnsen & Giroux, **which represented** Workers United in the beginning of the organizing drive.

"[The campaign is] still sustaining the momentum of organizing different stores, that's really happening organically," Creighton said. "It's not really being led by Starbucks Workers United."

But the campaign's momentum can't always be at peak levels, said Francis Ryan, a labor history professor at Rutgers University, and neither can union density.

Ryan said the Starbucks organizing effort is happening at a time when "the density of the union movement is much weaker now," compared with the rise of unionizing at supermarkets in the 1950s and 1960s.

"These young workers who are organizing don't have the broader kind of support that, let's say, the [Retail Clerks International Association] in the 1950s had," Ryan said. The retail clerks are now known as the United Food and Commercial Workers, he said.

Maintaining momentum is essential to reaching that end goal of getting a first contract, said Jim Begley, the director of the William Brennan Institute for Labor Studies at the University of Nebraska Omaha.

There isn't a specific timeline for when a campaign must secure a contract before organizing tends to dwindle, Begley said, but a lengthy process makes it more challenging, and the union should "strike while the iron is hot."

The person who works closely with the union's organizing campaign said that two Buffalo-area stores at Elmwood and Genesee as well as a store in Mesa, Arizona, have met with Starbucks at the bargaining table. The Elmwood store was the **first to unionize** in the country.

The organizing effort must expand and engage in protests against unfair labor practices to get the company to recognize the union and come to the bargaining table, the person said.

A Starbucks spokesperson said the company "will continue to follow the established law and the NLRB processes for all negotiations."

Under the NLRA, an employer is required to bargain in good faith with a union but does not have to reach an agreement on a contract. Creighton said the union may need leverage in the form of a strike with multiple stores to put "pressure on Starbucks." Some Starbucks stores have gone on strike recently over the company's new benefits package, **including baristas at five stores** in Massachusetts.

With workers scattered across the country and the company's vast financial resources, Starbucks baristas face "an uphill battle" to obtain the initial collective bargaining agreement, said Marquita Walker, a professor of labor studies at Indiana University.

There has been a resurgence in union activity nationwide, but Walker said she doesn't know how long that will continue. When workers are going up against a large corporation like Starbucks, they'll face challenges such as the company's offering of higher wages or benefits to take "control of their workforce."

"It's generally the workers that have to blink because they don't have the finances or the deep pockets or the resources to continue that energy burst," Walker said.

Creighton's colleague Arthur Wheaton, who is the director of labor studies at Cornell University's ILR School in Buffalo, said the baristas aren't guaranteed a CBA.

"I would not want to bet my life savings and my mortgage that they will get a first contract," Wheaton said.

But that absence of a contract is not a failure for the workers, he explained, because the "collective voice of 200 different stores" has motivated the company to improve compensation and other job-related benefits.

"They may not get their first contract, but one of the results of the organizing drives has been Starbucks making significant movements on trying to increase wages and benefits and working conditions," Wheaton said.

--Editing by Haylee Pearl.

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