Gilbert Houngbo, Director-General
International Labour Organization
Route des Morillons 4
CH-1211 GENEVA
Switzerland

May 8, 2023

libsynd@ilo.org

Re: Complaint to the ILO Committee on Freedom of Association against the Government of the United States

Dear Director-General,

The following is a complaint presented by Workers United, a trade union affiliated with the Service Employees International Union (SEIU), and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), to the ILO Committee on Freedom of Association concerning violations of the principles of freedom of association by the Government of the United States (USG)[1] in the context of widespread interference with workers' organizing and bargaining rights by the Starbucks Corporation.

I. INTRODUCTION

A. Parties and background

Workers United, an affiliate of SEIU, represents more than 86,000 workers in the apparel, textile, industrial laundry, food service, manufacturing, warehouse distribution, and non-profit industries in the United States and Canada. More important for purposes of this complaint, Workers United is the union to whom Starbucks workers around the United States have turned in their efforts to organize and bargain collectively the company.

The SEIU represents almost 1.9 million workers in multiple industries, including the fast-food sector. The rights of workers in this sector who have no union representation but want to form and join trade unions and bargain collectively with employers are directly affected by massive and continuing interference with workers' organizing and bargaining rights by Starbucks Corporation, and by features of the U.S. labor law system that fail to comport with ILO Conventions 87 and 98.

[1] The US Government has not ratified Conventions 87 or 98. However, Conventions 87 and 98 are considered to be constitutional in nature, "customary law above the conventions" to which all ILO members must adhere (see *Fact Finding and Conciliation Commission on Chile*, (ILO, 1975), para. 466.). The Committee has always exercised jurisdiction over complaints involving the United States, repeatedly noting, "Since its creation in 1951, it has been given the task to examine complaints alleging violations of freedom of association whether or not the country concerned has ratified the relevant ILO Conventions."

The AFL-CIO is the central trade union federation in the United States. It unites 60 affiliated unions with over 12.5 million working men and women public and private sectors throughout the country.

Starbucks Corporation is a global purveyor of specialty coffees. In the United States, Starbucks has more than 9,000 stores with more than 280,000 employees. Globally, the company employs more than 400,000 employees worldwide. Its annual revenue in 2022 was over $30 billion.

In 2020, Starbucks employees in stores around the United States began to organize trade unions and to seek collective bargaining with management. The company responded with an aggressive, unrelenting campaign of intimidation and interference with workers organizing and bargaining efforts, a campaign unprecedented in the history of American management anti-unionism.

B. Issues Raised

This complaint identifies three major ways in which U.S. law and practice fail to comport with ILO standards and enable Starbucks' continuing attacks on workers' organizing and bargaining rights:

> 1) Key elements of U.S. labor law fail on their face to comport with obligations under Conventions 87 and 98, and Starbucks has exploited these flaws to interfere with workers' freedom of association;
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> 2) The absence of effective and dissuasive remedies available under U.S. labor law violates principles of freedom of association and allows Starbucks to violate workers' organizing and bargaining rights with virtual impunity;
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> 3) The absence of "effective and expeditious procedures" and "rapid appeal procedures" required by ILO standards encourages Starbucks to continue interfering with workers' freedom of association by exploiting excessive delays to frustrate organizing and bargaining rights.

Complainants want to acknowledge at the outset that U.S. labor law authorities, especially the National Labor Relations Board (NLRB), have made extraordinary efforts to hold Starbucks accountable for its interference with workers' freedom of association. However, the NLRB can only apply the law and the enforcement measures that are available to it in the U.S. labor law system. This complaint will demonstrate the lacunae in U.S. law and the weak sanctions and endemic delays that vitiate the protections that the law is meant to provide – but doesn't.

U.S labor law and its enforcement steps are woefully inadequate to deal with a big, powerful employer determined to crush union organizing among its employees by

interfering with their freedom of association in violation of ILO standards. Since January 2021, workers in more than 280 Starbucks stores have voted in favor of union representation. None have achieved a collective agreement or are even close to achieving it. In the course of the organizing movement, Starbucks has fired nearly 200 union activists and made multiple threats of reprisal against workers if they vote in favor of union representation.

Contested election results and anti-union dismissals are now the subject of representation proceedings and unfair labor practice proceedings in hundreds of cases at various stages in the NLRB system. Starbucks' anti-union crusade makes it an outlier even among American employers who are well known for their harsh antipathy toward trade unions. U.S. labor law does not provide the NLRB with the tools needed to halt it.

At the NLRB's website, where cases are searchable by company name, the "Starbucks" file lists 1,241 cases involving the company.[2] Most of them started only in the past two years. This is by far the largest volume of NLRB cases involving a single private sector company. For comparison, in another current focus of concerns about anti-union practices in the United States, the NLRB lists 407 cases involving Amazon.[3]

In many cases where the NLRB's regional offices upheld election results, Starbucks is contesting the decision. Starbucks' ability to do so under U.S. law, thereby creating protracted delays, demonstrates how U.S. law and practice deny effective remedies to workers who exercise their rights. In one case, Starbucks outright refused to obey an NLRB order to bargain, converting the case from a representation proceeding to an unfair labor practice proceeding.[4] In other locations where a majority of workers chose union representation, the NLRB has issued complaints against the company for refusing to bargain.[5]

In many cases where the NLRB's investigation found merit in charges of anti-union threats, dismissals, and refusal to bargain, hearings before an administrative law judge (ALJ) are scheduled. In most cases where ALJs judges found that the company engaged in unlawful threats and anti-union dismissals, Starbucks is appealing those decisions. If Starbucks persists in these appeals, it could take several years to resolve the cases.

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[2] See NLRB website "Cases" page, at https://www.nlrb.gov/search/case/Starbucks (visited March 252023).

[3] See https://www.nlrb.gov/search/case/Amazon (visited March 19, 2023).

[4] See Josh Eidelson, "Starbucks Illegally Refused to Negotiate With Union, US Labor Board Rules," *Bloomberg BNA Daily Labor Report* (November 30, 2022), at https://www.bloomberg.com/news/articles/2022-11-30/starbucks-sbux-violated-labor-law-in-refusing-to-bargain-with-union-nlrb-says.

[5] See Josh Eidelson, "Starbucks Illegally Refused Union Contract Talks at 21 Cafes, NLRB Says," Bloomberg BNA Daily Labor Report (December 28, 2022), at https://www.bloomberg.com/news/articles/2022-12-28/starbucks-illegally-refused-union-contract-talks-at-21-cafes-nlrb-alleges.

The most recent example of Starbucks' violations of workers' freedom of association and defiance of U.S. labor law authorities is found in a March 1 decision by an NLRB administrative law judge (ALJ) in a case involving stores in the Buffalo, New York region, where workers first launched what became a nationwide organizing effort involving hundreds of stores. The ALJ found that Starbucks management violated the National Labor Relations Act dozens of times to affect workers' organizing efforts through "egregious and widespread misconduct demonstrating a general disregard for the employees' fundamental rights."[6]

Among dozens of separate findings of unlawful conduct, the ALJ said that Starbucks management spied on workers engaged in union activity, interrogated employees about their union activity, threatened employees with multiple forms of reprisals if they voted for union representation, closed stores in response to union activity, and fired seven employees because of their union activity. He also ordered the company to bargain with the union at a store where the union failed to win a majority vote because Starbucks' "unprecedented incursion of the highest-level corporate executives into Buffalo-area stores was relentless and likely left a lasting impact as to the importance of voting against representation."[7]

Starbucks management immediately announced it would appeal the ALJ's decision to the 5-member NLRB in Washington. This means that at least several months will pass before the decision can be upheld, and Starbucks can lodge further appeals to federal courts which will add years more to the process.[8]

II. STARBUCKS' ACTS WHICH VIOLATE FREEDOM OF ASSOCIATION

A. Starbucks' anti-union interference starts at the top

Starbucks founder and CEO Howard Schultz is one of the most prominent and powerful corporate executives in the United States. Schultz first took command of Starbucks in the 1990s. He moved to eliminate the handful of unions that existed in company stores then because "If they had faith in me and my motives, they wouldn't need a union."[9]

Schultz told Starbucks workers when the recent union organizing efforts began:

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[6] See decision of ALJ Michael A. Rosas, *Starbucks Corporation and Workers United*, Case Nos. 03-CA-285671 et. al., March 1, 2023

[7] *Id*.

[8] See Aneurin Canham-Clyne, "Starbucks to appeal major NLRB judge ruling: Starbucks will fight a judge's finding that the chain violated labor law as the brand uses the courts to run out the clock on the union drive," *Restaurant Dive*, March 8, 2023, at https://www.restaurantdive.com/news/starbucks-to-appeal-major-nlrb-judge-ruling-brand-engaged-in-union-busting/644436/.

[9] See Howard Schultz, *Pour Your Heart into It: How Starbucks Built a Company One Cup at a Time* (Hachette Books 1999)

> "We can't ignore what is happening in the country as it relates to companies throughout the country being assaulted, in many ways, by the threat of unionization…We didn't get here by having a union… "If you hate Starbucks so much, why don't you work somewhere else?"[10]

Schultz also called the union "a group trying to take our people," an "outside force that's trying desperately to disrupt our company" and "an adversary that's threatening the very essence of what [we] believe to be true."[11]

Schultz's view of unions "assaulting" companies and of union organizing as a "threat," and his cultish demand that employees have faith in him and his motives rather than coming together for collective bargaining, are the driving force behind Starbucks' continuing interference with workers' organizing and bargaining rights.

B. Punishing workers for organizing

Schultz's influence clearly filtered down the chain of command to regional and local management. One former Starbucks manager testified under oath in an NLRB hearing that top managers gave him names of employees the company had determined supported the union and told him to punish them. Regarding a union supporter with an excellent work record, the manager was told, "Go through her files . . . I'm sure there's something in there we can use against her."[12]

In 2022, CEO Schultz started and led a campaign to punish all Starbucks workers who succeeded in forming a union. The company instituted a series of wage and benefit increases, but insisted they would only take effect at non-union stores while denying them to stores where workers had formed a union. Schultz told employees, "We are not permitted by law to offer that benefit to stores that voted for the union." Follow-up messages to employees said, "partners at Starbucks US company-operated stores where we have the right to unilaterally make these changes will receive these wages and benefit enhancements… We do not have the same freedom to make these improvements at locations that have a union or where union organizing is underway."[13]

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[10] See Josh Eidelson, "Howard Schultz Returns to an Unstoppable Union Wave at Starbucks," BNA Daily Labor Report, May 12, 2022 at https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/XC53DTU4000000?bna_news_filter=daily-labor-report#jcite.

[11] See Greg Jaffe, "Howard Schultz's fight to stop a Starbucks barista uprising," *Washington Post*, October 8, 2022, at https://www.washingtonpost.com/business/2022/10/08/starbucks-union-ceo-howard-schultz/.

[12] See Josh Eidelson, "Starbucks Ex-Manager Says He Was Told to Punish Pro-Union Employees," *Bloomberg BNA Daily Labor Report* (October 11, 2022) at https://www.bloomberg.com/news/articles/2022-10-11/starbucks-manager-says-he-was-told-to-punish-pro-union-employees-in-buffalo.

[13] See NLRB Consolidated Complaint, *Starbucks Corporation and Workers United* (October 4, 2022) at https://www.nlrb.gov/search/case/19-CA-294579.

This is a misstatement of the law. Nothing prevents Starbucks from agreeing with the union to offer those benefits to union-represented stores and factor them into continued bargaining. But what Starbucks is saying here is more insidious and vindictive: 1) the law is on our side, not your side, and 2) this is what voting for a union gets you – no wage and benefit increases that we are granting to all the non-union stores.

Starbucks made the same points throughout the summer of 2022 with a series of more wage and benefit increases for non-union stores withheld from union stores. Based on an investigation that found merit in workers' unfair labor practice charges, the NLRB's Seattle regional office issued a complaint in October, 2022 that said:

> Respondent engaged in the conduct described above… because Respondent's employees at the Unionized and Unionizing stores joined a Union and engaged in concerted activities, and/or to discourage employees from engaging in these or other Union or protected, concerted activities.

A hearing before an ALJ on these unfair labor practice charges took place in December 2022. The parties are awaiting the ALJ's decision. If the ALJ upholds the complaint, Starbucks can appeal to the full NLRB in Washington, a procedure that normally takes 1-2 years and sometimes more. If the NLRB upholds the ALJ's decision, Starbucks can appeal to a federal circuit court, which can add years more to the resolution of the case. This is to point out the recurring problem of excessive delays in the U.S. labor law system, contrary to ILO standards, discussed in more detail below.

C. Starbucks and "bluewashing"

Starbucks has invoked international labor standards to defend its interference with workers' freedom of association. The company has embraced ILO standards in public statements and, most recently, in a statement to Starbucks shareholders opposing a proposal for an independent third-party report on the company's response to employees' organizing efforts.

Starbucks is clearly trying to wrap itself in the mantle of the ILO and the Committee on Freedom of Association to justify its anti-union campaign conduct. This is a new variation on "bluewashing," a term referring to the color of the United Nations flag, by which corporations try to give an appearance of social responsibility by association with international organizations.[14]

Here are relevant sections of Starbucks' 2020 "Global Human Rights Statement":

[14] See Timothy J. McLimon, "Bluewashing Joins Greenwashing As The New Corporate Whitewashing," *Forbes Magazine* (October 3, 2022), at https://www.forbes.com/sites/timothyjmcclimon/2022/10/03/bluewashing-joins-greenwashing-as-the-new-corporate-whitewashing/?sh=719505c0660c.

> [W]e commit to respect the principles of the UN Guiding Principles on Business and Human Rights; UN Global Compact; OECD Guidelines for Multinational Enterprises; International Bill of Rights…We adhere to ILO Core Labor Standards, including …freedom of association, participation in collective bargaining and just and favorable conditions of work…[15]

Here are relevant sections of the Starbucks Board of Directors' statement in opposition to a shareholders' proposal for an independent report on the company's anti-union campaign conduct (note the statement's direct reference to the Committee on Freedom of Association):

> Human rights in the UN Guiding Principles include the Universal Declaration on Human Rights as well as the 1998 International Labour Organization Fundamental Principles and Rights at Work… The 1998 Declaration includes the principle of freedom of association and the right to collective bargaining, among other fundamental labor rights. U.S. labor law conforms to these principles… Moreover, a cornerstone principle of U.S. labor law provides that all parties, including employers, have the right to freedom of expression and opinion in connection with union organizing efforts, provided there is no interference with this fundamental right. The ILO's Committee on Freedom of Association has confirmed that employers enjoy such a right…[16]

The Committee has <u>not</u> confirmed that employers enjoy an international right to wage vitriolic campaigns of fear and intimidation against workers' organizing efforts in the name of freedom of expression. The Committee has, rather, insisted that freedom of expression and freedom of association "must not become competing rights, one aimed at eliminating the other" and stated further:

> While providing all relevant ballot information… would be acceptable as part of the process of a certification election, the Committee considers that *the active participation by an employer in a way that interferes in any way with an employee exercising his or her free choice would be a violation of freedom of association and disrespect for workers' fundamental right to organise...*" (emphasis added).[17]

Starbucks has every right to explain accurately to employees how the voting process works. But the company has gone far beyond providing information. Starbucks sends

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[15] See full statement at https://stories.starbucks.com/press/2020/global-human-rights-statement/.

[16] The Board of Directors statement is found at pages 81-82 of its 2023 *Notice of Annual Meeting of Shareholders and Proxy Statement*, at https://d18rn0p25nwr6d.cloudfront.net/CIK-0000829224/0b243e54-2d25-4d38-beb2-860cb9566095.pdf.

[17] See ILO Committee on Freedom of Association, Complaint against the United States, Case No 2683, Report No. 357(June 2010).

teams of top managers to stores where workers are trying to organize, and these managers hold captive-audience meetings and one-on-one meetings with employees to convey the message that dire consequences will befall them if they form unions. The messaging is all meticulously scripted by anti-union lawyers and consultants who specialize in campaigns of fear and intimidation to keep their clients "union-free."

All this amounts to "active participation by an employer" interfering, in violation of ILO standards, with employees exercising their rights to freedom of association. Complainants urge the Committee on Freedom of Association to see through Starbucks' "bluewashing" maneuver and to reject the company's attempt to use the Committee's good name to excuse its violations of workers' organizing and bargaining rights.

D. Scope of evidence in this complaint

Complainants note that in an earlier case involving the United States, the Committee remarked that it had to review 150 pages of submissions, replies and counter-arguments, and 600 pages of supporting documents (NLRB documents and decisions, court cases, legal analysis, statistics, union literature, press clippings, etc.).[18] In the present case, with representation proceedings and unfair labor practice charges in NLRB regional offices around the country involving hundreds of Starbucks stores and more than 1,250 discrete unfair labor practice charges, documentation already amounts to tens of thousands of pages. The volume steadily increases, with new charges, complaints, decisions and orders arriving each new week, sometimes each new day.

This documentation is joined by thousands of news articles about Starbucks' anti-union actions. Starbucks workers' organizing and Starbucks management's "unionbusting" attacks are now the biggest labor news story in the United States, perhaps the biggest ever. A Google search for [Starbucks/union/organize] yields more than 2,200,000 results. We cite in this complaint some carefully reported news items from respected news sources to convey the scope of Starbucks' interference with workers' organizing and bargaining rights and the extent to which the Starbucks workers' movement has become a global concern.

Complainants are limiting this complaint to approximately 30 pages and will selectively, rather than exhaustively, cite NLRB documents and decisions, court cases, news articles etc. to convey the scope of Starbucks' violations of ILO standards. We do not want to burden the Committee with an unmanageable volume of citations and supporting material. That being said, complainants will be glad to supply any additional information requested by the Committee. We also may also send supplementary information about significant new developments as they occur, especially ALJ decisions, NLRB decisions, and court decisions.[19]

[18] See ILO Committee on Freedom of Association, Report No 284, Case No. 1523 (November 1992).

[19] Complainants recognize that the Committee cannot "look over the shoulder" of the NLRB or the courts and make its own findings with respect to evidence in these cases. The information is not provided for this purpose, but for the purpose of informing the Committee on the overall scope of Starbucks' interference

III. U.S. LAW AND PRACTICE AND ILO STANDARDS ON FREEDOM OF ASSOCIATION

As described above, this complaint identifies three major ways in which U.S. law and practice contravene ILO standards. The complaint goes on to show how these violations have allowed Starbucks to continually and destructively interfere with workers' rights to freedom of association and to bargain collectively despite efforts by the National Labor Relations Board to stem the illegal behavior.

Complainants hasten to acknowledge that the NLRB is doing what it can to address Starbucks' labor law violations and commend the agency for its efforts. However, the law itself falls short of adherence to ILO standards, fails to provide adequate remedies required by ILO standards, and allows for excessive delays in contravention of ILO standards. In short, the U.S. labor law system has not deterred Starbucks' continuing aggressive campaign against workers' organizing efforts in violation of international standards.

Complainants will examine each of these three factors in turn. For each, we first set the stage with relevant ILO standards defined by the Committee on Freedom of Association and, where relevant, the Committee of Experts on the Application of Conventions and Recommendations. Next, we review features of U.S. law and practice that fall short of these standards. Then, we give details of Starbucks management's conduct taking advantage of these shortfalls to violate employees' organizing and bargaining rights.

A. Key elements of U.S. labor law fail on their face to comport with obligations under Conventions 87 and 98

1. ILO Standards

The mandate of the Committee consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions[20]

Where national laws, including those interpreted by the high courts, violate the principles of freedom of association, the Committee has always considered it within its mandate to examine the laws, provide guidelines and offer the ILO's technical assistance to bring the laws into compliance with the principles of freedom of association, as set out in the Constitution of the ILO and the applicable Conventions.[21]

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with workers' freedom of association, and the flaws in U.S. labor law and practice that let the company sustain its campaign of interference with virtual impunity.

[20] See ILO *Compilation of Decisions* (2018), para. 9.

[21] *Id.*, para. 17.

The right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in fact.[22]

2. Elements of U.S. law and practice that fail to comport with ILO standards

a. Analysis by U.S. Council for International Business (USCIB)

The National Labor Relations Act (NLRA) allows employers to interfere with workers' freedom of association in violation of ILO standards. Complainants' first authority for this proposition is the very organization which represents U.S. employers at the International Labor Organization: the U.S. Council for International Business.

The USCIB has stated forthrightly:

> U.S. law and practice conflict with many of the requirements of the ILO standards, preventing U.S. ratification of some of the core labor standards… U.S. ratification of Conventions 87 and 98 would require particularly extensive revisions of longstanding principles of U.S. labor law to conform to their standards… *U.S. ratification of the convention would prohibit all acts of employer and union interference in organizing, which would eliminate employers' rights under the NLRA to oppose unions*.[23]

The USCIB's statement is based on an exhaustive analysis published in a book by the then-chief legal advisor to the U.S. employer delegation at the ILO. The book notes that, with regard to workers' organizing rights, the ILO standard "lays down an obligation for the state to take measures to prevent *any* interference with such rights *without qualification* that is, interference by individuals, by organizations or by public authorities."[24] But U.S. law violates this standard, as the book explains:

> Under the NLRA, "an employer does not commit an unfair labor practice if he makes a pre-election speech on company time and premises to his employees and denies the union's request for an opportunity to reply . . . or when anti-union statements are made by management representatives to individual employees at their respective work stations . . . [the book adds several more examples of employers' legally permitted anti-union

[22] *Id.*, para. 472.

[23] USCIB, "U.S. Ratification of ILO Core Labor Standards", *Issue Analysis*, April 2007 (emphasis added), at https://www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf.

[24] See Edward E. Potter, *Freedom of Association, the Right to Organize and Collective Bargaining: The Impact on U.S. Law and Practice of Ratification of ILO Conventions No. 87 and No. 98* (1984), at 43 (emphasis in original), citing International Labor Conference, *Record of Proceedings*, 32d Sess. 306, 470 (1949).

> campaign tactics against workers' organizing]. *These are all forms of interference with organizing, but are lawful under the NLRA . . . Such employer "free speech" and other acts of interference permitted under the NLRA would be illegal under Convention No. 87.*[25]

There could not be a clearer acknowledgment from a more impeccable source that U.S. law and practice fail to comply with ILO standards.

The Committee has already, in earlier cases against the United States, addressed key elements of U.S. labor law that fail to comply with ILO standards. These include the permanent striker replacement doctrine;[26] denial of access to the workplace for trade union representatives to speak with workers about forming and joining trade unions;[27] denial of backpay remedy to unlawfully dismissed migrant workers;[28] prohibitions on collective bargaining for public employees,[29] and misclassification of employees as "supervisors" to strip them of organizing rights.[30]

b. Starbucks statements arguably permitted by U.S. law but which violate the international standard requiring non-interference

Starbucks has created an anti-union website (https://one.starbucks.com/yourvote/) that contains the following statements, carefully scripted by the company's anti-union lawyers arguably to stay within the bounds of what is permitted by U.S. labor law:[31]

Unions are a business, just like Starbucks – only unions make their money from member dues instead of great coffee…They are a business that makes money via member dues… If your store is unionized, Workers United may make you pay dues to continue working in your store. Any dues that are collected from member paychecks would go to Workers United, not to partners.

A contract could prohibit your store manager from working directly with you on any employment concerns, or prohibit you from swapping shifts in your store, picking up shifts at other stores…

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[25] *Id*., at 43-44 (emphasis added).

[26] See ILO Committee on Freedom of Association, Case No. 1543, Report No. 278 (June 1991).

[27] See ILO Committee on Freedom of Association, Case No. 1523, Report No. 284 (November 1991).

[28] See ILO Committee on Freedom of Association, Case No. 2227, Report No. 332 (November 2003).

[29] See ILO Committee on Freedom of Association, Case No. 2292, Report No. 343 (November 2006) and Case No 2460, Report No. 344 (March 2007).

[30] See ILO Committee on Freedom of Association, Case No. 2524, 292, Report No. 349 (March 2008).

[31] Complainants do not concede that these statements are permitted under U.S. law.

Without a union, you can speak for yourself, directly to your leaders and support partners. If the union were voted in, Workers United would become your only voice.

In a final agreement, the union might negotiate away current conditions that matter a lot to you.

Compensation can increase, decrease or remain the same – it can be a gamble.

Starbucks legacy of working side-by-side to create industry firsts for partners and the new investments we are making now as a result of our co-collaboration sessions shows what we can do together and how quickly we can do it. Side-by-side, we can hear YOUR voice directly from you. We can work quickly to define what changes are needed most.

Starbucks would have to agree to changes during the collective bargaining process which takes an average of more than a year to complete. Voting for union representation will not automatically change pay, benefits, or how we operate in any way.

Across the negotiating table, we'll hear a shared voice, mediated through a third-party – one who is coming to know who we are and how we operate for the first time. This could lead to lengthier discussions as both sides bargain with each other… partners will benefit more by working directly with Starbucks than they will through a third-party.

Here is a point-by-point explanation of why Starbucks's statements interfere with workers' freedom of association and right to organize in violation of the ILO's non-interference standard, whether or not they violate U.S. law:

Unions are a business, just like Starbucks – only unions make their money from member dues instead of great coffee…They are a business that makes money via member dues… If your store is unionized, Workers United may make you pay dues to continue working in your store. Any dues that are collected from member paychecks would go to Workers United, not to partners.

This is a false statement intended to mislead workers about the nature and functioning of unions. Trade unions are non-profit organizations responsible to their members, not businesses responsible to shareholders seeking return on investment. Furthermore, Starbucks fails to explain that workers can be required to pay dues only if Starbucks agrees to such a "union security" arrangement in the collective bargaining agreement.

Telling workers that their dues would only go to the union suggests a corrupt motive, while leaving out the many ways in which union dues directly serve workers' interests, such as legal counsel, research to support the union's bargaining proposals, compensating worker delegates or "shop stewards" for time spent assisting co-workers, communications departments to keep workers informed, arbitration expenses to contest disciplinary action without just cause, expenses to help workers in the same and related industry organize and thus take wages out of competition, and many more activities that help union-represented workers.

A contract could prohibit your store manager from working directly with you on any employment concerns, or prohibit you from swapping shifts in your store, picking up shifts at other stores…

Store managers could not negotiate individually with workers on issues covered in the collective agreement, but other day-to-day issues and concerns could still be discussed by employees with their managers. These are issues that Starbucks workers care about and would like to see protected in a contract. The only way a contract could prohibit them is by Starbucks insisting on such prohibitions. This threatens adverse consequences if workers choose union representation.

Without a union, you can speak for yourself, directly to your leaders and support partners. If the union were voted in, Workers United would become your only voice.

This is false. Workers have every right to speak with managers and supervisors about any issues, as long as they are not engaged in individual bargaining contrary to the collective agreement. The union provides a unified voice on terms and conditions of employment.

In a final agreement, the union might negotiate away current conditions that matter a lot to you.

This is a threat that workers will lose benefits if they choose union representation.

Compensation can increase, decrease or remain the same – it can be a gamble.

The "gamble" statement is a threat that choosing union representation will have negative consequences for workers.

Starbucks legacy of working side-by-side to create industry firsts for partners and the new investments we are making now as a result of our co-collaboration sessions shows what we can do together and how quickly we can do it. Side-by-side, we can hear YOUR voice directly from you. We can work quickly to define what changes are needed most.

By suggesting that no improvements can be gained through union representation, management is threatening that only negative consequences can come from workers' choice of representation. Furthermore, by suggesting that union representation prevents "what changes are needed most," Starbucks is indicating to workers that collective bargaining is futile and voting for the union is useless.

Starbucks would have to agree to changes during the collective bargaining process which takes an average of more than a year to complete. Voting for union representation will not automatically change pay, benefits, or how we operate in any way.

This is telling workers that voting for a union is futile, declaring that union representation will not change "in any way" how the company operates.

Across the negotiating table, we'll hear a shared voice, mediated through a third-party – one who is coming to know who we are and how we operate for the first time. This could lead to lengthier discussions as both sides bargain with each other… partners will benefit more by working directly with Starbucks than they will through a third-party.

By immediately tagging the union as a "third party" rather than an organization of the workers themselves, Starbucks negates any purported commitment to freedom of association, the essence of which is workers' right to have an organization "of their own choosing" to negotiate with management. Furthermore, telling workers that they will benefit more without a union is a threat to punish workers if they choose union representation.

c. Captive-audience meetings

U.S. law and practice giving employers' enormous latitude to wage intimidating, fear-mongering campaigns against workers' organizing efforts are the main area of failure to meet ILO standards. This is reflected most visibly in the phenomenon known as captive-audience meetings, which are allowed by U.S. law.

Starbucks has exploited this "lawful" (i.e. under U.S. law, but contrary to ILO standards) interference with organizing by sending top managers swarming into stores where union organizing is underway to browbeat workers into abandoning their organizing efforts.[32] Managers' invasion is accompanied by frequent, systematic captive-audience meetings scripted by anti-union consultants in which workers are required to listen to speeches and watch PowerPoint and video presentations filed with implicit threats, carefully worded so as not to constitute direct threats, of workplace closure, loss of pay and benefits, harsher discipline and other dire consequences if employees vote for union representation.

In April 2022, the NLRB General Counsel issued a Memorandum asserting that the mandatory aspect of captive-audience meetings, by which employers may require workers' attendance at such meetings under pain of discipline, amounts to unlawful interference under the NLRA. The memo asserts that such meetings must be voluntary. [33] This is an important step, but a practical problem remains: refusal to attend the employer's captive-audience meeting may mark workers as union supporters and open them up to risks of retaliation. In any event, employers have mounted legal challenges to the Memorandum which are blocking its implementation and are likely to continue

[32] See Noam Scheiber, "As Starbucks Workers Seek a Union, Company Officials Converge on Stores," *New York Times*, November 9, 2021, at https://www.nytimes.com/2021/10/18/business/economy/starbucks-union-buffalo.html.

[33] See NLRB, "NLRB General Counsel Jennifer Abruzzo Issues Memo on Captive Audience and Other Mandatory Meetings" (April 7, 2022), at https://www.nlrb.gov/news-outreach/news-story/nlrb-general-counsel-jennifer-abruzzo-issues-memo-on-captive-audience-and.

blocking it for at least 2-3 years or even more. Employers have already filed a lawsuit against the memorandum and vowed to pursue the matter to circuit courts of appeal, and possibly to the Supreme Court.[34] In the meantime, employers can continue to hold mandatory captive-audience meetings, and Starbucks is taking full advantage of this feature of U.S. law contrary to ILO standards.

Captive-audience meetings provide no opportunity for union representatives, or in many cases even workers themselves, to respond to these attacks. As one scholar explains:

> Under the National Labor Relations Act, as interpreted by the courts and the National Labor Relations Board over the last sixty years, employers have been permitted to give captive audience speeches at work to employees contemplating unionization. Employees must attend such meetings, may not be able to question the employer representative, and may not have the union come to the workplace to present opposing views. Not surprisingly, these speeches are one of the most effective anti-union weapons that employers currently have in their arsenal.[35]

The United States is exceptional in its toleration of captive-audience meetings with such wide-ranging, venomous attacks on trade unions. A scholarly analysis in a respected comparative labor law journal called captive-audience meetings "an affront to human dignity, of the right to be treated as an autonomous adult, not a child in tutelage to one's employer, subject to its instruction on political or social subjects including unionization."[36]

B. Even where key elements of U.S. law align with the conventions on their face, the absence of effective, timely and dissuasive remedies available to the NLRB violates principles of freedom of association by allowing Starbucks to violate workers' organizing and bargaining rights with virtual impunity.

1. ILO Standards

The basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed.[37]

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[34] See Tim Ryan, "NLRB GC Overstepped In Captive Audience Memo, Suit Says," *Law 360*, March 17, 2023, at https://www.law360.com/articles/1587012/nlrb-gc-overstepped-in-captive-audience-memo-suit-says.

[35] See Paul M. Secunda, "The Future of NLRB Doctrine on Captive Audience Speeches," 87 *Indiana Law Journal* 123 (2012), at https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1511&context=facpub.

[36] See *Comparative Labor Law & Policy Journal*, Vol. 29 (2008) issue titled "The Captive Audience," at https://heinonline.org/HOL/LandingPage?handle=hein.journals/cllpj29&div=3&id=&page=.

[37] See ILO Compilation of Decisions (2018), para. 1140.

Legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of anti-union discrimination to ensure the practical application of Articles 1 and 2 of Convention No. 98.[38]

The Committee has recalled the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers.[39]

The Committee considers that the role of the Government in relation to acts of anti-union discrimination and interference…includes, where appropriate, investigation and enforcement in order to…ensure that such acts are identified and remedied, that guilty parties are punished, and that such acts do not reoccur in the future.[40]

2. Case studies of Starbucks' interference with workers' freedom of association

Implicit threats permitted under U.S. labor law can interfere with workers' organizing as forcefully as direct threats. Both implicit and explicit threats violate ILO standards. But in any case, in stores around the country, Starbucks crossed the line from arguably implicit threats to clearly unlawful direct threats.

NLRB regional offices have issued formal complaints against Starbucks in hundreds of instances of unlawful threats, spying, interrogation and other forms of interference with workers' organizing rights. Most of these unlawful acts occurred in captive-audience meetings and one-on-one meetings between manager and employees.

To issue a complaint, the regional office must find "merit" in unfair labor practice charges. Merit findings are based on detailed investigations of charges by regional agents of the NLRB and evaluations by experienced labor law attorneys in the regional offices. These investigations include interviewing and taking affidavits from workers who filed charges and from potential witnesses. They also involve consulting extensively with employers and offering them an opportunity to rebut any charges through written position statements and dialogue with the NLRB regional officials. Only upon finding that charges are meritorious does the NLRB issue complaints and set cases for trial before administrative law judges, normally several months in the future.

Complainants offer many examples of Starbucks management's threats and intimidation in captive-audience meetings and one-on-one meetings with employees around the country. So as not to overburden the committee with exhaustive information on every case, these examples are limited in scope to decisions by administrative law judges after hearing the evidence from all sides on complaints issued earlier by an NLRB regional

[38] *Id.*, para. 1148.

[39] *Id.*, para 1150.

[40] *Id.*, para. 1161.

director. Many more cases are in the pipeline, based on complaints issued by regional directors who found merit in the union's unfair labor practice charges, and set the matter for trial before an ALJ in the future.

Many of those cases are still pending. Some have been tried before an ALJ, and the parties await a decision. In others, the cases are in the midst of a trial as this complaint is submitted. In yet others, a trial is scheduled for a future date. In some cases, Starbucks has reached a settlement agreement with the NLRB in which management agrees to post a notice in the workplace promising not to repeat unlawful action. That's all. There are no fines or penalties for violations of workers' organizing rights under U.S. labor law. This goes to the ILO standard on the importance of effective and dissuasive remedies, discussed later in this complaint.

The Committee must keep in mind that because of the lack of dissuasive sanctions and expeditious proceedings, as required by ILO standards, these examples of labor law authorities finding Starbucks guilty of unlawful conduct have had no deterrent effect on the company's conduct. Indeed, upon each new finding of unfair labor practices and orders to halt such conduct, Starbucks "doubles down" with immediate appeals challenging the findings and orders and dials up the pressure of its anti-union campaigns around the country. In short, NLRB enforcement action is having no deterrent effect on Starbucks' violations.

Seattle Roastery store:[41]

At a flagship Starbucks store called the Roastery near the company's headquarters in Seattle, Washington, the more than 100 employees began an organizing effort in early 2022. After an unfair labor practice trial before the ALJ, the judge found, "During a four-week period between the filing of the petition and the start of the mail ballot election, Respondent [Starbucks] held multiple meetings per week with employees about the union drive. It appears that each employee attended at least three such meetings and they occurred in groups of about 10 to 20 workers." The judge said that in these meetings "the message from Respondent was objectively clear, if employees unionized the company would prioritize non-unionized stores for additional upgrades or benefits over the Roastery."

The judge found that in these meetings, Starbucks management unlawfully:

- threatened employees that future upgrades and/or benefits could be put at risk if employees unionized;

[41] See decision of ALJ John T. Giannopoulos, *Siren Retail Corp. d/b/a Starbucks and Workers United affiliated with Service Employees International Union*, Cases 19-CA-290905 et. al. (January 31, 2022). All ALJ decisions are publicly available on the NLRB website at www.nlrb.gov in the "Cases and Decisions" page, where they are searchable by case number.

- threatened employees that existing benefits will be reduced if they vote to unionize;

- threatened employees that it would be futile for them to unionize;

- threatened employees that, if they unionize, the company will prioritize non-union stores and unionized stores will not receive added benefits.

Complainants note here that in the separate representation proceeding, distinct from the unfair labor practice case, a majority of workers at the Roastery voted in favor of union representation in April 2022. Starbucks objected to the election results at the regional office level and lost. Starbucks appealed to the full NLRB in Washington and lost. Starbucks then refused to bargain, converting the case to an unfair labor practice case.

In November 2022, the NLRB upheld the regional office's certification of the election and again ordered Starbucks to bargain with the union.[42] Starbucks has persisted in its refusal, appealing the NLRB decision to a federal circuit court, a process that typically takes years more to conclude. Complainants will elaborate on this further in discussing excessive delays in U.S. labor law in violation of ILO standards.

Philadelphia "Broad and Washington" store[43]

At this Starbucks in downtown Philadelphia, Pennsylvania, workers began an organizing effort in June 2019 (this was before, and not related to, the nationwide organizing campaign by Workers United that began in 2021). The ALJ found that Starbucks management unlawfully:

- engaged in surveillance of employees to discover their union activities;

- interrogated employees about their union activity;

- told an employee that management reduced his 40 work hours because the employee engaged in union activities;

- required an employee to cease making concerted complaints about the employee's store manager;

- prohibited employees from talking with each other about terms and conditions of employment during work time while permitting employees to talk about other work and non-work subjects;

[42] See NLRB, *Siren Retail Corporation d/b/a Starbucks and Workers United, affiliated with Service Employees International Union*, Case 19–CA–299478 (November 30, 2022).

[43] See decision of ALJ Andrew Gollin, *Starbucks Corporation d/b/a Starbucks Coffee Company and Philadelphia Baristas United*, Cases 04-CA-252338 et. al. (June 21, 2021).

- issued warnings to an employee because she engaged in union activities, and to discourage employees from engaging in these or other concerted activities;

- reduced an employee's scheduled work hours, because she engaged in union activities, and to discourage employees from engaging in these or other concerted activities;

- discharged the same employee because she engaged in union activities, and to discourage employees from engaging in these or other concerted activities;

- issued warnings to an employee because he engaged in union activities, and to discourage employees from engaging in these or other concerted activities;

- discharged the same employee because he engaged in union activities, and to discourage employees from engaging in these or other concerted activities.

The ALJ ordered Starbucks to post a notice not to repeat the unlawful conduct, and to offer reinstatement and back pay to the unlawfully dismissed employees. Starbucks appealed the decision. One year and eight months later, on February 13, 2023, the NLRB upheld the ALJ's ruling.[44] Starbucks has announced it will appeal to the federal circuit court of appeals, adding years more to the process. In the meantime, the fired employees have not returned to work, and the union organizing effort dissolved.[45]

Three stores in Kansas and Kansas City, Missouri[46]

At three Starbucks locations in the state of Kansas and in Kansas City, Missouri, workers began an organizing effort in early 2022. The ALJ found that Starbucks management unlawfully:

- told employees that they would not or might not get previously promised wage increases if they selected union representation;

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[44] See NLRB, *Starbucks Corporation d/b/a Starbucks Coffee Company and Philadelphia Baristas United*, 372 NLRB No. 50 (February 13, 2023

[45] See Lizzy McClellan Ravitch, "Philly Starbucks locations are facing a new labor violations complaint: The company is accused of union busting at its 20th and Market and 34th and Walnut stores. It's not the first time the Philadelphia office of the NLRB has lodged a complaint against Starbucks," *Philadelphia Inquirer* (January 23, 2023) at https://www.inquirer.com/jobs/labor/starbucks-union-nlrb-complaint-labor-violation-20230126.html. Note that this article also reports on a new complaint issued by the NLRB at two other downtown Philadelphia stores, which found merit in workers' charges – remarkably similar to those at the Broad and Washington store, that Starbucks unlawfully discouraged employees from forming a union, reduced the hours and wages of union workers in retaliation for their union activities, and fired two workers for engaging in union activities.

[46] See decision of ALJ Arthur J. Amchan, *Starbucks Corporation and Workers United SEIU*, Cases 14-CA-290968 et. al. (October 12, 2022).

- told employees that if they selected the Union that managers could not help them with any tasks;

- told employees they would not be able to transfer to another Starbucks store if they selected the Union;

- refused to allow employees to work schedules they had worked prior to the filing of the Union' representation petition;[47]

- called the police to disperse employees who are not violating any legal requirement;

- discharged four employees because of their union activity.

The ALJ in this case also took the extraordinary step of recommending a bargaining order requiring Starbucks to bargain with the union even when the union had won the NLRB election. Starbucks challenged the election results, blocking the initiation of bargaining. The judge said:

> I recommend a bargaining order because it is necessary to fully remedy the violations in this case for the following reasons:
>
> (1) To vindicate the Section 7 rights of a majority of unit employees who have been denied the benefits of collective bargaining since at least April 8, 2022. It is only by restoring the status quo and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees will be able to fairly assess the effectiveness of the Union in an atmosphere free of the Respondent's unlawful conduct.
>
> (2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes the Respondent's incentives to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by the possibility of a decertification petition or by the prospect of imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a bargaining order… The possibility of a decertification petition may likely allow Respondent to profit from its unlawful conduct.

Starbucks has appealed the ALJ's decision to the NLRB, where it is pending more than a years after the events in question.

[47] Employees' work schedules and work hours are an especially important and sensitive subject for Starbucks workers, since so many work part-time and must organize the rest of their lives – child care, school, other jobs etc. – around their Starbucks schedules.

Ann Arbor, Michigan store[48]

A particularly disturbing case arose at the Ann Arbor, Michigan store. Here, the ALJ found that Starbucks discriminatorily discharged an employee "because she attended a Board proceeding in Case 07–RC–290295 and thereby participated in Board processes."

The NLRA is especially vigilant about retaliation against employees for participating in Board proceedings and created a separate unfair labor practice to address this in Section 8(a)(4) of the Act. As the Board explains, "We cannot do our job unless people come forward, file charges, cooperate with NLRB investigations, and testify in NLRB hearings. It is unlawful for employers to discriminate against employees for helping the NLRB do its job."[49]

The ALJ took the added step of ordering special remedies used only in the most egregious cases of employer misconduct. First, because of the gravity of retaliations against employees for participating in Board processes, he ordered the company to post nationwide, both physically and in its internal electronic communication systems, a notice promising not to repeat its unlawful conduct. Second, he ordered that a high-level manager read the notice to assembled Ann Arbor employees in the presence of a Board agent, or that a Board agent read the notice in the presence of the manager.

The notice posting says:

> WE WILL NOT discharge employees because they engage in union and protected concerted activities.
>
> WE WILL NOT discharge employees because they participate in Board processes, including but not limited to attending Board proceedings.
>
> WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.
>
> WE WILL offer to reinstate [employee] to her former job or, if that no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges she would have enjoyed absent the discrimination against her.

[48] See decision of ALJ Geoffrey Carter, *Starbucks Corporation and Workers United*, Cases 07–CA–292971, 07–CA–293916 (October 7, 2022).

[49] See NLRB, "Discriminating against employees for NLRB activity (Section 8(a)(4))," at https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/discriminating-against-employees-for-nlrb-activity-section-8a4.

> WE WILL make [employee] whole for any and all loss of earnings and other benefits incurred as a result of our unlawful decision to discharge her.
>
> WE WILL remove from our files any references to our unlawful decision to discharge [employee] and, within 3 days thereafter, notify her in writing that this has been done and that the unlawful decision will not be used against her in any way.
>
> WE WILL compensate [employee] for the adverse tax consequences, if any, of receiving a lump-sum backpay award…
>
> WE WILL hold a meeting or meetings during work time at our Main and Liberty store in Ann Arbor, Michigan, and have this notice read to you and your fellow workers by District Manager [name of District Manager] (or an equally high-ranking management official if we no longer employ her), in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at our option, by a Board agent in the presence of Schmehl and, if the Union so desires, an agent of the Union.

Starbucks has appealed the ALJ decision to the NLRB. If the Board upholds the judge's order, Starbucks can appeal to a federal circuit court of appeals, adding years more to the process. During this process, Starbucks has no obligation to read or post the notice as ordered by the ALJ.

d. Federal court cases

Federal courts have also weighed in on Starbucks' interference with workers' organizing rights. In August 2022, the U.S. District Court in Tennessee granted the NLRB's request for an extraordinary Section 10(j) injunction to reinstate seven workers terminated by management because of their union activity.[50]

The "Memphis 7" have returned to work, but Starbucks is appealing the district court judge's decision to issue the injunction. If the federal circuit court reverses the district court, these employees once again would be dismissed, and have to pursue their claims through the NLRB's regular and delay-ridden unfair labor practice procedures.

A federal judge on February 17, 2023 issued another injunction prohibiting Starbucks from dismissing workers for their union activity. The judge's action was based on events at the Ann Arbor, Michigan store discussed above. He said:

[50] See NLRB, "NLRB Region-15 Wins Injunction Requiring Starbucks to Rehire Seven Unlawfully Fired Workers, Post the Court's Order, and Cease and Desist from Unlawful Activities" (August 18, 2022), at https://www.nlrb.gov/news-outreach/news-story/nlrb-region-15-wins-injunction-requiring-starbucks-to-rehire-seven.

> The Board's presentation of facts—consistent with findings made by the ALJ—is more than sufficient to support its theory that Starbucks violated §§ 8(a)(3) and (1) of the NLRA… the Court will direct Starbucks to offer [employee] interim reinstatement to her former position, or if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed… The Court will order that Starbucks cease and desist from discharging employees for engaging in activities protected under Section 7 of the Act.[51]

Starbucks immediately announced its intention to appeal the judge's decision to a federal circuit court.

In the interest of time and the Committee's patience, complainants stop here with these examples of Starbucks' interference with workers' organizing rights. We could fill many more pages with similar findings by labor law authorities, but we want to move on to the crux of this complaint.

The Starbucks cases show that workers and unions can seek representation elections and win them and file unfair labor practice charges with the NLRB and win them. But this does not mean that the U.S. labor law system is functioning in conformance with the requirements of Conventions 87 and 98. On the contrary, these cases demonstrate the disfunction and impotency of the U.S. labor law system, which fails to comply with ILO standards on non-interference, dissuasive remedies, and expeditious handling of cases. This brings us to the next part of the complaint on the lack of effective remedies and dissuasive sanctions.

2. Lack of effective remedies in U.S. law and practice

U.S. labor law explicitly does *not* provide "civil remedies and penal sanctions" against acts of anti-union discrimination, nor does it ensure "that guilty parties are punished," as required by ILO standards. As the NLRB explains: "The Act is entirely remedial. It is intended to prevent and remedy unfair labor practices, not to punish the person responsible for them."[52]

The NLRB cannot penalize an employer for breaking the law. It can only order a "make-whole" remedy restoring the *status quo ante* as the remedy for unfair labor practices. And the remedy is meant to make whole only the affected employee; the devastating effect on coworkers' exercise of the right to organize normally is not part of the equation.

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[51] See U.S. District Court for the Eastern Division of Michigan, Opinion and Order, *Elizabeth Kerwin v. Starbucks Corporation* (February 17, 2023), at https://storage.courtlistener.com/recap/gov.uscourts.mied.365902/gov.uscourts.mied.365902.30.0.pdf.

[52] See NLRB, *Basic Guide to the National Labor Relations Act* (1997), at https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf.

This non-punitive character of U.S. labor law is not contained in legislation but was imposed by the Supreme Court. Soon after adoption of the NLRA, in the *Consolidated Edison* case, the Court ruled that punitive measures were not authorized by the NLRA.[53] In the *Republic Steel* case that quickly followed, the Court said again that "the Act is essentially remedial . . . The Act does not prescribe penalties or fines in vindication of public rights."[54] Several commentators have observed that in neither case did the Supreme Court cite any statutory language or legislative history to support the distinction between remedial and punitive measures.[55]

An eminent U.S. labor law scholar explained:

> The principal deficiency is that remedies are often too little and too late. For example, a recalcitrant employer can frequently kill off an organizing drive with an intimidating series of discharges; and when the sanction comes, two or three years later, it may be barely more than a slap on the wrist.[56]

When an employer violates the National Labor Relations Act, the standard enforcement remedies are:

> 1) requiring the employer to post a notice in the workplace (or now, with modern technology, also in the employer's internal workplace communication system) a statement that "We will" obey the law, and "We will not" repeat unlawful conduct, and
>
> 2) in cases involving unlawful dismissal, offering reinstatement and backpay to affected workers; however, the worker has an obligation to "mitigate" the employer's backpay liability by seeking other work, and earnings from such work are deducted from the employer's backpay liability.

These are the only remedies applied in the vast majority of unfair labor practice cases: post a notice and pay usually trivial backpay to fired workers, most of whom do not return to work.

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[53] *Consolidated Edison v. NLRB*, 305 U.S. 197 (1938).

[54] *Republic Steel Corp. v. NLRB*, 311 U.S. 7 (1940).

[55] See, for example, Jeffery A. Smisek, "New Remedies for Discriminatory Discharges of Union Adherents During Organizing Campaigns," 5 *Industrial Relations Law Journal* 564 (1983), at https://www.jstor.org/stable/24049647.

[56] See Theodore J. St. Antoine, ". "Prevention of Antiunion Discrimination in the United States," 9 *Comparative Labor Law Journal* 384 (1988).

Notice posting is supposed to reassure workers that the employer acknowledges the error of its ways and restore workers' confidence in being able to resume their organizing efforts. But there is no evidence that it has any effect on future organizing prospects. The "shaming" aspect of such notices means nothing to shameless employers. In fact, posting a notice is a good way to drive home to employees just how far the company is willing to go to crush organizing.

As for offers of reinstatement, most unlawfully fired workers ultimately accept a settlement agreement long after their dismissals and never return to the workplace, well after the organizing effort has subsided. The fired worker has usually moved on in life and has no desire to return to a workplace with a target on her back. The theoretical objective of the reinstatement remedy – that reinstatement is a "victory" that will inspire co-workers to redouble their organizing efforts – instead is just a reminder to co-workers that union activity is a high-risk endeavor that means an activist loses her job.

The NLRB reports that 6,307 workers were offered reinstatement in unfair labor practice cases in the 2021 fiscal year. Of these, only 374 – just 6 percent – accepted the offer and returned to work. 5,933 (94 percent) took severance pay pursuant to a settlement agreement and did not return to the workplace.[57] Under such settlement agreements, fired workers take a modest amount of severance pay to go away and not return. All their coworkers left behind know is that they tried to form a union and never came back, which is the message that employers want workers to hear.

Another important feature of the weak enforcement system in U.S. labor law is that the NLRB is not authorized to enforce its own orders. If an employer refuses to obey an NLRB order, such as an order to reinstate unlawfully dismissed workers or an order to bargain with workers who voted for union representation, the Board must petition a federal circuit court of appeals for enforcement of its order.

As with the remedial-not-punitive nature of NLRB remedies, the non-self-enforcement feature limiting the Board's power is not found in the NLRA but was read into the law by the Supreme Court in the same case that upheld the constitutionality of the Act. The Court said, "The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced."[58]

The fact that only a court – usually a federal appeals court – can enforce an NLRB order hard-wires lengthy delays into the labor justice system. It typically takes 2-3 years for an appeals court to decide a case involving an employer's appeal of an NLRB decision ordering the employer to bargain or upholding the Board's finding that the employer committed unfair labor practices.

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[57] See NLRB "Reinstatement Offer" page at https://www.nlrb.gov/reports/nlrb-case-activity-reports/unfair-labor-practice-cases/remedies-achieved/reinstatement.

[58] See *NLRB v. Jones & Laughlin Steel Corp*., 301 U.S. 1 (1937).

3. Underfunding and understaffing of the NLRB

The NLRB is hard-pressed to keep up with the tsunami of Starbucks cases, first and foremost because Congress and the Trump administration systematically starved the agency of the budgetary resources needed to carry out its work.

Beginning in 2014, the Republican-controlled Congress refused to approve any increase in NLRB funding. The Agency received the same Congressional appropriation of $274.2 million for nine consecutive years – already down from the earlier level of $283.4 million in 2010 – while costs continued to rise. Adjusting for inflation, the Agency's budget decreased 25% since 2014.[59]

The staffing situation became even more dire when Donald Trump became president and appointed a new majority of NLRB members with professional backgrounds as anti-union attorneys, more interested in enfeebling the law than enforcing it. A favorite mantra of right-wing conservatives in the United States is "starve the beast," which means cutting taxes and budgets of federal agencies that enforce the law.[60] The new Trump-appointed majority refused to hire new attorneys and agents to replace those who retired or left for other jobs. Overall, NLRB staffing levels dropped 39% and staffing in Field Offices shrunk by a full 50% since 2002, leaving the agency understaffed and ill-equipped to handle the wave of Starbucks cases that washed over it starting in 2021.

The volume of union election petitions rose by more than 50% in 2021-2022, driven mainly by Starbucks workers' organizing efforts. The volume of unfair labor practices rose by nearly 20%, with Starbucks cases accounting for more than any other single company. Accounting for both representation and ULP cases, total case intake at the Field Offices increased 23%—from 16,720 cases in 2021 to 20,498 cases in 2022. This increase of 3,778 cases is the largest single-year increase since 1976 and the largest percentage increase since 1959.[61]

The NLRB general counsel called the situation "unsustainable' and said, "We need Congress to provide increased funding so we can hire the staff we need and provide necessary resources to conduct hearings and elections, investigate charges, settle and

[59] See Aurelia Glass, "The NLRB Protects Workers' Right To Organize, Yet Remains Underfunded: Under the Biden administration, the National Labor Relations Board is striving to protect workers' right to form a union and collectively bargain, but the agency remains underfunded and understaffed," *Center for American Progress* (December 5, 2022), at https://www.americanprogress.org/article/the-nlrb-protects-workers-right-to-organize-yet-remains-underfunded/.

[60] A google search for "starve the beast" yields 185,000 results, most of them reflecting American-style right-wing, anti-government ideology.

[61] See NLRB Office of Public Affairs, *News and Publications* (October 6, 2022), at https://www.nlrb.gov/news-outreach/news-story/election-petitions-up-53-board-continues-to-reduce-case-processing-time-in.

litigate meritorious cases, and obtain full and prompt remedies for workers whose rights are violated."[62]

At the end of 2022 Congress finally authorized a $25 million budget increase for the NLRB, bringing it to $299 million. But adjusting for inflation, this only restored it to the same 2014 level when the budget was frozen in place, continuing the difficulty of adding sufficient staff and resources to tackle Starbucks' anti-union offensive.[63] And the increase fell far short of President Biden's request to Congress for an increase to $319 million.

4. Starbucks undeterred

Weak remedies under the NLRA and a continued budget and staffing shortage means that the NLRB still lacks the capacity to adequately deal with Starbucks' unprecedented offensive against workers' freedom of association under ILO standards. The reality is this:

- Workers begin to organize, and Starbucks interferes with workers' organizing rights.
- Workers and unions seek representation elections and file unfair labor practice charges with the NLRB, but Starbucks' interference continues apace.
- Regional directors find merit in charges, and Starbucks' interference continues apace.
- Administrative law judges find Starbucks guilty of unlawful interference, and Starbucks' interference continues apace.
- Starbucks challenges, appeals, loses appeals, re-appeals, and its interference continues apace.

If the U.S. labor law system functioned in reasonable compliance with ILO standards, NLRB actions and decisions in early cases would serve to deter future violations. But the opposite has happened here. The NLRB and ALJs and courts have acted, but Starbucks is unrelenting in its nationwide campaign to destroy workers' organizing. Instead of slowing and halting its violations, Starbucks is accelerating them.

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[62] *Id*.

[63] See Daniel Wiessner, "U.S. budget bill includes first increase for labor board since 2014," Reuters News (December 20, 2022), at https://www.reuters.com/legal/government/us-budget-bill-includes-first-increase-labor-board-since-2014-2022-12-20/; see also Diego Areas Munhoz, "NLRB Funding Boost Falls Short of White House, Unions' Requests," *Bloomberg BNA Daily Labor Report* (December 21, 2022), at https://news.bloomberglaw.com/daily-labor-report/nlrb-funding-boost-falls-short-of-white-house-unions-requests.

The NLRB enforcement system has exposed the lack of "sufficiently dissuasive sanctions" required for compliance with ILO standards. For Starbucks, occasionally posting a notice promising not to repeat its unlawful conduct and paying modest backpay to unlawfully fired workers (where the company is not still appealing such orders), is simply a cost of doing business – the business of interfering with workers' freedom of association in violation of ILO standards to achieve CEO Howard Schultz's lifelong mission to remain "union-free."

C. The lack of "effective and expeditious procedures" and "rapid appeal procedures" required by ILO standards allows Starbucks to continue interfering with workers' freedom of association and to use excessive delays to frustrate organizing and bargaining rights.

1) ILO Standards

Cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned.[64]

The longer it takes for a procedure – particularly concerning the reinstatement of trade unionists – to be completed, the more difficult it becomes for the competent body to issue a fair and proper relief, since the situation complained of has often been changed irreversibly, people may have been transferred, etc., to a point where it becomes impossible to order adequate redress or to come back to the status quo ante.[65]

Delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante.[66]

Cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned.[67]

[64] See ILO Compilation of Decisions (2018), para. 1139.

[65] *Id.*, para. 1143.

[66] *Id.*, para. 1144.

[67] *Id.*, para. 1145.

In cases in which proceedings concerning dismissals had already taken 14 months, the Committee requested the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and emphasized that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts.[68]

The existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice.[69]

Legal standards are inadequate if they are not coupled with effective and expeditious procedures and with sufficiently dissuasive sanctions to ensure their application.[70]

The Committee is of the view that legislation should make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference.[71]

2. Excessive delays in the U.S. labor law system

In cases discussed above, complainants have already pointed to Starbucks' strategy of challenging the NLRB at every turn, both at the regional office level and at the Board level in Washington. Starbucks takes the same approach to federal district court decisions by appealing them to circuit courts. It is too soon to know if the company will go a step farther and appeal circuit courts decisions to the U.S. Supreme Court, but if the company's practice to now is any guide, it is more than likely.

Election case delays:

Long delays in the U.S. labor law system confound workers' exercise of the right to freedom of association. In representation cases, NLRB elections take place at least several weeks after workers file a petition seeking an election. In some cases, the election can be held up for months by employer-initiated disputes over which workers should be eligible to vote in the election as part of the "appropriate bargaining unit."

An employer can also file objections to an election after it takes place, arguing that the

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[68] *Id.*, para. 1146. This is not to argue that the Committee has established a "14-month rule," but it does indicate a benchmark much more favorable to unlawfully dismissed workers than what they experience in the United States, where a recalcitrant employer can drag on cases for 2-3 years, and often more.

[69] See *General Survey*, report of the ILO Committee of Experts on the Application of Conventions and Recommendations" (1994), para. 214, at https://www.ilo.org/public/libdoc/ilo/P/09661/09661(1994-81-4B).pdf.

[70] *Id.*, para. 224.

[71] *Id.*, para. 232.

union used unfair tactics. The regional office that conducted the election then takes several weeks more conducting hearings on the objections and ruling on them. But if the region rules in workers' favor and orders the employer to bargain, another appeal can be brought to the Board in Washington. The Board normally takes 1-2 years more to decide the appeal.

If the Board upholds the regional office and orders the employer to bargain, the employer can then undertake what is called a "technical refusal to bargain," converting the matter from a representation case to an unfair labor practice case and forcing the NLRB to bring the case to a federal circuit court of appeals to obtain an enforcement order. The new ULP case often requires years more to resolve in the courts.

Unfair labor practice case delays:

Debilitating delays also occur in more common unfair labor practice cases involving threats, intimidation, surveillance, interrogation, bad-faith bargaining, and discriminatory discharges for union activity. After the issuance of a complaint, several months normally pass before a case is heard by an administrative law judge. Then several more months go by while the judge ponders a decision. The judge's decision can then be appealed to the NLRB, where one, two, or three years go by before a decision is issued. The NLRB's decision can then be appealed to the federal courts, where again up to three years pass before a final decision is rendered.

10(j) injunction delays:

Delays also undercut what is supposed to be the most powerful tool available to the NLRB: going to federal court to secure an injunction under Section 10(j) of the NLRA for immediate reinstatement of employees fired for organizing. Immediate reinstatement is supposed to prevent employers from decapitating the organizing drive by almost dismissing worker leaders and exploiting the lengthy delays built into regular unfair labor practice proceedings.

To secure an injunction, Board attorneys must convince the judge that without it, workers' exercise of the right to freedom of association will suffer "irreparable harm." But the average time for NLRB attorneys to go to court seeking a 10(j) injunction is almost ten months after employees' dismissal.[72] By then it is too late for the remedial effect of reinstatement to take hold.

Analysts credit the General Counsel's office for maintaining a ten-month average delay in 10(j) cases when the number of cases has risen and the number of staff has declined,

[72] See Braden Campbell, "NLRB Took 10 Months To Seek Injunctions, Memo Says," *Law360,* April 13, 2023, at https://www.law360.com/employment-authority/articles/1596680.

compared with earlier periods.[73] But ten months is ten months – far too long for employees to benefit from their co-workers' returning to the workplace.

A news analysis of the 10(j) injunction delay phenomenon says it "reflects the agency's struggle to manage a growing caseload with a shrinking staff," one source noting "If the board waits too long to file for 10(j)… there may be nothing for the injunction to cure, because the organizing campaign may be dead."[74]

Starbucks' aggressive new strategy for 10(j) case delays:

Starbucks has launched an aggressive new legal maneuver to deliberately increase delays specifically targeting 10(j) injunction cases. In cases where the NLRB has sought injunctive relief under Section 10(j) of the NLRA for immediate reinstatement of workers fired for organizing, Starbucks is invoking novel "discovery" demands to obtain copies of NLRB internal documents, and e-mail and text communications among NLRB personnel, union representatives, workers, and journalists.

A Trump-appointed federal judge in Buffalo, New York, where the union won the first of many NLRB election victories in the face of management's captive-audience meetings and dismissals of union activists, has ordered the NLRB and union representatives to turn over to Starbucks all communications between them and journalists covering the organizing movement.[75] The NLRB has appealed the order, declaring "Starbucks has successfully weaponized discovery before the district court as a further method of coercing employees, which has threatened to derail the proceeding intended to protect those very rights."[76]

And not only in the Buffalo case. In four of five cases where the NLRB has sought a 10(j) injunction to have workers reinstated, Starbucks' lawyers have made similar intrusive discovery demands for documents and communications among the NLRB, the union, workers, and journalists. The effect of this maneuvering is to further delay reinstatement of workers fired for organizing and impose burdensome new costs on the Board and the union.

Here is a news analysis describing Starbucks' strategy:

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[73] See Braden Campbell, "NLRB's 10(j) Injunction Pace Reflects Tight Staffing," *Law 360*, April 18, 2023, at https://www.law360.com/employment-authority/labor/articles/1598503.

[74] *Id.*

[75] See Paul Farhi, "Starbucks will get reporters' messages with union, federal judge rules," *Washington Post*, October 29, 2022, at https://www.washingtonpost.com/media/2022/10/29/starbucks-reporters-union-communications-judge/.

[76] See Robert Iafolla, "Starbucks Workers Union Asks Appeals Court to Nix Subpoenas," *Bloomberg BNA Daily Labor Report*, December 29, 2022, at https://www.bloomberglaw.com/bloomberglawnews/bloomberg-law-news/XD638EEO000000?#jcite.

> Starbucks Corp.'s push for discovery while defending against NLRB requests for federal court orders against the company has sparked disputes and delays as it vies for access to evidence typically unavailable in administrative proceedings.
>
> The company's aggressive discovery strategy is an outlier in litigation over injunctions sought by National Labor Relations Board regional directors, which are meant to preserve the status quo during underlying administrative cases.
>
> Federal judges issued non-routine discovery orders in four of the five injunction cases that the agency brought against the coffee chain last year.
>
> Federal district courts have issued discovery orders in just three other NLRB injunction cases initiated over the past five years, according to a Bloomberg Law review of 54 dockets. That list includes a case that led to a court order last fall directing Amazon to stop retaliating against workers for their pro-union activism…
>
> Starbucks' approach provides a costly model for other employers that, if followed, could make injunctions harder for the NLRB to win and ultimately less effective because of the associated delays.
>
> Litigation over court orders is one part of Starbucks' massive campaign to resist unionization. Workers at nearly 300 stores have voted for union representation, and the company is facing about 70 complaints pending before NLRB administrative law judges alleging it committed unfair labor practices.[77]

Labor law practitioners in the United States know what is going on here. Delay almost always benefits the employer in labor law proceedings. The longer it takes to get to the bargaining table; the longer it takes to progress toward a collective agreement; the longer dismissed workers have to wait to win their unfair labor practice claims, the more time employers have at their disposal to make employees disillusioned with the process and ultimately undermine their resolve to organize and bargain. Starbucks workers show no sign of yielding in their determination to have their union and bargain collectively, but even the most stalwart among them cannot help but feel frustrated by the company's ability to "game" the labor law system to its advantage.[78]

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[77] See Robert Iafolla, "Starbucks' Discovery Fights Are Stalling Labor Injunction Cases," *Bloomberg BNA Daily Labor Report*, March 31, 2023, at https://news.bloomberglaw.com/daily-labor-report/starbucks-discovery-fights-are-stalling-labor-injunction-cases.

[78] See Braden Campbell, "Starbucks' Legal Tack Slowing Results In Union Blitz," Law 360 (February 23, 2022), at https://www.law360.com/employment-authority/articles/1467724/starbucks-legal-tack-slowing-results-in-union-blitz.

3. A new paradigmatic case:

An unfair labor practice complaint recently issued by an NLRB regional office encapsulates both Starbucks' continuing attacks on workers' rights despite its claims of adherence to international labor standards, and the flaws in the U.S. labor law system that fail to halt the attacks.

As noted earlier, the NLRB issues a complaint only when it finds merit in the unfair labor practice charge, and only after a rigorous investigation into events – including interviewing and taking statements from workers and from management, and reviewing relevant documentary evidence. Upon issuance of a complaint, the Board sets the case for trial before an administrative law judge.

On April 21, 2023, the Board's regional director issued a complaint against Starbucks alleging 24 separate unfair labor practices at a company store in Albuquerque, New Mexico during July and August 2022. Among them, the complaint states Starbucks held mandatory captive-audience meetings in which management:

- threatened employees with a loss of wage increases if they selected the Union as their bargaining representative;
- threatened employees with a loss of benefits if they selected the Union as their bargaining representative;
- threatened employees with discharge if they selected the Union as their bargaining representative;
- followed up the threat by discharging a leader of the organizing effort because of her union activities and support.[79]

Note that the regional director issued this complaint nine months after the threats and the discharge of the employee who led the organizing drive, and scheduled the ALJ trial for February 27, 2024 – a year-and-a half after the events giving rise to the complaint. After the trial, some number of months will go by before the ALJ issues a decision. After that, Starbucks can appeal the decision to the 5-member NLRB in Washington, which normally takes 1-2 years. The company can then appeal the Board's decision to a federal circuit court of appeals, adding years more to the process. Meanwhile, the General Counsel's office is still reviewing the discharge case to determine whether to seek a 10(j) injunction for immediate reinstatement of the fired union activist – immediate with respect to the injunction, but almost a year after the discharge.

As with many others, it can be reasonably concluded from this case that:

1) The NLRB's strong enforcement efforts against Starbucks' violations of the NLRA have had no deterrent effect. Starbucks continues its massive campaign of interference

[79] See NLRB Region 28, *Starbucks Corporation and Workers United*, Case No. 28-CA-301119 (April 21, 2023), at https://www.nlrb.gov/case/28-CA-301119.

against workers' organizing efforts despite the multitude of decisions by labor law authorities finding that the company violated employees' freedom of association;

2) Starbucks is able to sustain its attacks, notwithstanding the many findings of violations, because it has no fear of the remedies available to the NLRB;

3) Starbucks is able to sustain its attacks by taking advantage of many opportunities to delay proceedings – in fact, Starbucks is single-handedly causing even more delays because its nationwide campaign of interference with workers' organizing is overwhelming the staff and resources of the NLRB.

These realities make clear that Starbucks is failing to live up to its public pledges to adhere to ILO standards, and that the U.S. labor law system is failing to protect workers' freedom of association as required by ILO standards.

V. The United States concedes that U.S. labor law falls short of ILO standards

As complainants have earlier noted, we do not fault the NLRB for flaws in U.S. labor law, ineffective remedies, and excessive delays that run afoul of ILO standards. The NLRB is doing as much as it can with the tools it has to work with. The problem is the tools.

The U.S. government recognizes the problem. The administration of President Joe Biden and key Democratic congressional leaders support a labor law reform proposal called the Protect the Right to Organize (PRO) Act, which was considered in the last Congress and will be re-introduced in the new Congress. Along with many other reforms, the PRO Act would significantly strengthen remedies for unfair labor practices.

When he ran for President, Joe Biden said:

> Today, there's a war on organizing, collective bargaining, unions, and workers. Employers repeatedly interfere with workers' efforts to organize and collectively bargain. In nearly all union campaigns, corporations run a campaign against the union. Three in four employers hire anti-union consultants, spending approximately $1 billion on these efforts. Corporations fire pro-union workers in one of every three union campaigns and about half of corporations threaten to retaliate against workers during union campaigns. Even workers who successfully are able to form a union are later impeded by corporations who bargain in bad faith. About half of newly organized groups of workers do not have a contract a year later and one in three remain without a contract two years after a successful union election.

Biden promised to "hold corporations and executives personally accountable for interfering with organizing efforts" and to "penalize companies that bargain in bad faith."

For the first time, the PRO Act's reforms would introduce "dissuasive sanctions" consistent with ILO standards. It would require employers to pay full backpay to unlawfully dismissed workers without deduction of interim earnings. The Act would apply monetary penalties against employers for violating workers' rights under the NLRA: employers that illegally retaliate against workers face a penalty of up to $50,000 per violation, and this amount is doubled if the employer has previously been found to have violated the NLRA in the prior five years. In addition, the PRO Act authorizes civil penalties against corporate officers and directors who have knowledge of violations and failed to prevent them.[80] As of now, the NLRA contains none of these measures, leaving the NLRB unable to halt and remedy Starbucks' violations of workers' freedom of association despite the agency's best efforts with the tools at its disposal.

Earlier versions of the PRO Act have been approved by the House of Representatives, when Democrats held a majority in the House. But it has always been stymied in the Senate, even when Democrats held a majority, because under a Senate procedural rule called the "filibuster," a supermajority of 60 votes in the 100-member body are required to pass legislation.[81] This failure to adopt the PRO Act is further evidence of the failure of U.S. law and practice to conform to ILO standards.

VI. Request for an on-the-spot mission

Complainants request the Committee to request the USG to accept an "on-the-spot" mission pursuant to the Annex on such missions in the 2018 Compilation of Decisions as soon as it can be arranged to meet with Starbucks workers and their union, Starbucks management, U.S. government officials (especially from the NLRB), and other relevant actors. This will enable the ILO to obtain an up-to-date understanding of Starbucks' workers' efforts to exercise rights of association, organizing and bargaining, and the specifics of US law, procedure and practice which render the USG unable to respond to these violations in a manner consistent with the principles of freedom of association.

We believe that the U.S. government would accept such a mission, and petitioners will do everything possible to ensure it, and to facilitate the work of the mission, at least with respect to meeting with Starbucks workers and their union.

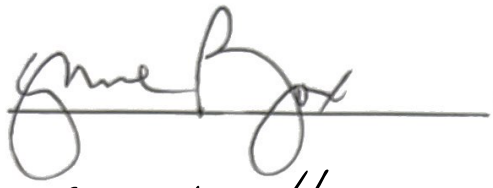
An on-the-spot mission will better inform the Committee's analysis by giving life to its review of documents in this case. Such a mission will have the added benefit of bringing dramatic public attention to the work of the Committee on Freedom of Association in a

[80] See Celine McNicholas, Margaret Poydock, and Lynn Rhinehart, "How the PRO Act restores workers' right to unionize: A chart of the ways the PRO Act fixes major problems in current labor law," *Economic Policy Institute Briefing Paper* (February 4, 2021), at https://www.epi.org/publication/pro-act-problem-solution-chart/.

[81] See Nicholas Fandos, "House Passes Labor Rights Expansion, but Senate Chances Are Slim: The House approved the most significant enhancement of labor rights since the New Deal, but the measure appeared headed for a Senate filibuster amid widespread Republican opposition," *New York Times* (March 9, 2021), at https://www.nytimes.com/2021/03/09/us/politics/house-labor-rights-bill.html.

country and a labor law community that, lamentably, have much to learn about the ILO and the authoritative role of the Committee on Freedom of Association.

Respectfully submitted,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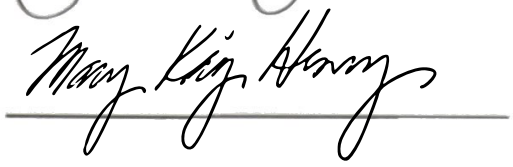
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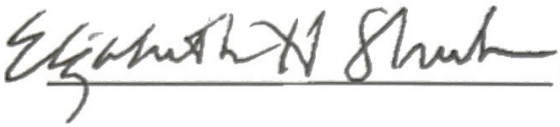
(for the AFL-CIO)

Point of contact for communications related to this complaint:

Mary Joyce Carlson