

Labor & Employment Issues In Focus

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WRITERS TO INK DEAL WITH PRODUCTION COMPANIES, END 146-DAY STRIKE

On Sunday, September 24, 2023, the Writers Guild of America (“WGA”) and the Alliance of Motion Picture and Television Producers (“AMPTP”) reached a tentative agreement, bringing an end to 146 days of picketing. On Tuesday, September 26, 2023, the WGA voted to end the strike completely. The highlights of the agreement include pay increases, streaming residuals, and language addressing the usage of Artificial Intelligence (AI). A complete summary of the agreement can be read [here](#).

First, most writers’ minimum pay will increase 5% immediately, with another 4% in May 2024 and another 3.5% in May 2025. The agreement also creates a new tier of increased payment for writer-producers and establishes “script fees,” which must be paid to staff writers who write episodes. Health fund contributions will increase by a half percentage point to 12% of companies’ reportable earnings. Also, each writer on a writing team will receive pension and health contributions up to the relevant cap, whereas before, they were required to “split” the applicable cap.

Regarding streaming, one of the most important issues, lack of residual pay had become increasingly problematic over the years. The issue was largely due to companies’ refusal to share any streaming data. Now, companies will need to provide the WGA with numbers reflecting hours streamed of “self-produced high budget streaming programs” (such as a Netflix original series) subject to a confidentiality agreement. This clause is expected to potentially lay the groundwork for the WGA to negotiate residuals for writers of streamed content going forward. The writers also gained increases in foreign streaming residuals and a viewership-based streaming bonus for those shows that become wildly popular in a short period of time: series and films that are viewed by 20% or more of a streaming service’s total domestic subscribers within the first 90 days of release will receive additional bonuses calculated as a percentage of existing fixed residuals.

The Writers also laid some groundwork for future battles over the use of AI in screenwriting. Restraints on companies’ use of AI include a ban on AI writing or rewriting “literary material,” and AI-generated material cannot be considered source material under the contract. This will prevent companies from replacing human writers, undermining a writer’s credit, or driving down wages or working conditions with AI. Writers can choose to use AI to assist with their writing, but they cannot be required to use AI when creating content, and companies must disclose whether any material given to a writer to work on has been AI-generated in any way. The WGA also reserved its right to challenge company exploitation of writers’ material used to train AI. This restricts production companies from feeding writers’ content into AI systems for “learning” purposes.

The three-year contract is widely considered a big win for the writers; they made significant gains in areas that AMPTP referred to as “non-starters” at the beginning of negotiations (thus inciting the strike in the first place). Although studio executives were [vocal](#) about “waiting the writers out,” with one even telling media outlets that their endgame was to “allow things to drag on until union members start losing their apartments and losing their houses,” this sentiment apparently did not test well with audiences. With the actors’ union SAG-AFTRA still on strike, hopefully, studio executives have learned a valuable lesson about going to battle against the talented and media-savvy people responsible for their profit margins.

RAISES FOR ME BUT NOT FOR THEE: NLRB JUDGE HOLDS THAT STARBUCKS ILLEGALLY INCREASED WAGES AND BENEFITS ONLY FOR NON-UNION WORKERS

In yet another loss for Starbucks, on September 28th, National Labor Relations Board (“NLRB”) Administrative Law Judge Mara-Louise Anzalone (“ALJ Anzalone”) held that the coffee giant violated the National Labor Relations Act (“Act”) when in August 2022 it increased wages and provided more benefits such as tipping and quicker sick time accrual to all non-union stores. The case is *Starbucks Corp.*, N.L.R.B. ALJ Case 19-CA-294579 (Sept. 28, 2023).

Prior to 2021, none of Starbucks’ stores were unionized. However, that began to change in August of 2021 when Buffalo, New York area workers petitioned to have their union, Workers United Labor Union International (“Union”) recognized. Starbucks then engaged in a company-wide strategy against the organizing. It used online communications with workers to establish “collaboration sessions” between executives and nonunion workers where workers made their needs known, including wage and benefit increases.

Starbucks announced on May 3, 2022 it would give raises to workers at stores that had not sought to unionize. ALJ Anzalone found that Starbucks executives decided to raise wages in part to counter the Union’s organizing regarding pay issues. The ALJ also held that Starbucks used online messaging to tell its workers that the company was seeking “collaboration” and used other buzzwords such as “co-creating” regarding wage and benefits as a way to dissuade them from unionizing and effectively tell workers that abstaining from unionization was the key to getting wage increases. In sum, the Judge found that Starbucks “used its top executive [Howard Schultz] to launch a corporate-wide effort to manipulate its employees’ free choice by conditioning their pay and benefits on their willingness to forgo organizing.”

Starbucks argued that it would have been illegal to give pay raises to unionized workers because a company cannot make unilateral changes to unionized workers’ pay and benefits. ALJ Anzalone rebuffed this as Starbucks provided no explanation as to why the company was so interested in “collaborating” and “co-creating” with its workers

regarding pay increases shortly after unionization. Furthermore, Starbucks never considered bargaining with the Union regarding the increases.

Therefore, ALJ Anzalone found that Starbucks illegally discriminated against unionized workers by withholding the increased pay and benefits, hoping to deter others from joining the Union. This case is one in a flurry of NLRB Administrative Law Judge rulings that hold that Starbucks violated federal labor law. However, this is the first nationwide ruling against Starbucks. ALJ Anzalone ordered Starbucks to compensate unionized workers for the pay and benefits they were denied, ordered new CEO Laxman Narasimhan to read a notice of employee rights to US workers, and ordered Starbucks to post a notice of rights in every store.

STARBUCKS CONTINUES TO LOSE AT THE BOARD

Continuing the coffee chain's long-running losing streak at the National Labor Relations Board ("NLRB"), four Starbucks stores in the St. Louis area violated federal law when they discouraged store employees from joining a union, the NLRB concluded on September 21. The case is *Starbucks Corp.*, N.L.R.B. ALJ Case 14-CA-295813 (Sept. 21, 2023).

According to the decision, the coffee giant engaged in unfair labor practices when, for example, store managers and district managers at multiple locations threatened to rescind planned raises and benefit enhancements. At one location, a store manager told employees during a mandatory meeting that they would definitely receive planned benefits if they didn't unionize, but if they did, "that has to be negotiated." At another location, a transgender barista described a conversation with a store manager and district manager that turned to the worker's trans identity and unionization efforts. "[The store manager] told me that Starbucks already had all the resources that I would need," the worker told the Board. "And that she can get me into contact with other trans people in Starbucks. But that she didn't believe those resources would be available to me anymore if we went Union." Starbucks then violated the National Labor Relations Act ("NLRA") by asking the worker if they wanted to see any changes around the store, which amounted to a solicitation of grievances. The Board noted that solicitation of grievances is unlawful when it "carries with it an implicit or explicit promise to remedy the grievances and 'impress[es] upon employees that union representation [is] . . . [un]necessary.'"

At a different location, Starbucks employees held a "sip-in" demonstration, during which off-duty employees and union supporters ordered drinks with pro-union monikers. The event led baristas to call out names like "union strong" and "union yes," according to the Board ruling. In response, an assistant store manager told at least one barista to stop reading out the names or he would be sent home. Starbucks also posted an employee-facing document on the same day, noting that baristas "should . . . not write or print content on items that advocates for a political, religious or a personal issue, even if requested by a customer." According to the Board, Starbucks' posted directive, which could be construed as barring activities like the sip-in, "has a reasonable tendency to chill employees from exercising their Section 7 rights."

Further undermining Starbucks' argument, the company has a history of promoting "political" and "personal" discourse, the Board pointed out, by selling T-shirts associated with Black Lives Matter, LGBTQ+ pride and other such topics. "At best, this is inconsistent, and at worst, this is hypocrisy," the Board wrote of the rule. Similarly, the Board found the same store in violation when it banned employees from wearing pro-union T-shirts — designated "graphic T-shirts" — under its dress code policy. Given that the location could not produce prior warnings for the same offense, "It ... appears that what was previously accepted (i.e., wearing graphic t-shirts as a general matter) suddenly became unacceptable, once employees began wearing Union graphic t-shirts, began organizing and went on strike," the Board concluded.

The Board ordered a number of remedies for the violations, including rehiring a worker fired for wearing a pro-union T-shirt, gathering and reading out to employees a list of Starbucks' violations and their rights under the NLRA, and, in the case of one store, tossing previous election results and holding a new election. In addition to the four stores the Board found one other St. Louis store not in violation. Moreover, the Board dismissed some complaints even at stores it found to be in violation, noting that practices like holding captive audience meetings were legal and dismissing the accounts of one pro-union employee it found to be "less than credible" and "uncooperative."

Workers have voted to unionize at more than 350 Starbucks locations. Seventy more locations have voted against unionization, and elections are pending at more than 25 locations.

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