

# Union Organizing Update for Employers

*Mid-Year 2022 Stats & Strategies*

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# National Labor Relations Act

- ▶ Federal legislation enacted in 1935 (“Wagner Act”)
- ▶ Granted employees “Section 7 Rights”
- ▶ Created the National Labor Relations Board
- ▶ Amended in 1947 (“Labor Management Relations Act” or “Taft-Hartley Act”)

# Section 7 Employee Rights

- ▶ To self-organization
- ▶ To form, join, or assist labor organizations
- ▶ To bargain collectively through representatives of their own choosing
- ▶ To engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection
- ▶ *To refrain from any and all such activities . . . .*

# National Labor Relations Board

- ▶ Federal agency
- ▶ Enforces the National Labor Relations Act
- ▶ Policy set by 5-member Board in Washington, D.C.
- ▶ 26 Regional Offices
- ▶ Processes unfair labor practice charges and representation petitions

# Jurisdiction

- ▶ Private sector employers, employees, and labor organizations (with exclusions for agricultural workers, interstate railroads, and airlines)
- ▶ NLRB has discretion not to assert jurisdiction over all businesses “affecting commerce”
- ▶ Coverage standards vary by industry
- ▶ Annual revenue thresholds range from \$50,000 to \$1,000,000

# PRO Act

- ▶ Multifaceted legislation aimed to protect workers and unions
- ▶ Gives more workers right to unionize
- ▶ Restricts employers' ability to resist unionization
- ▶ Imposes new penalties on employers
- ▶ Highly unlikely to pass in current Senate

# Union Organizing Process

- ▶ Union and interested employees start talking
- ▶ Employees asked to sign authorization cards
- ▶ Union may request voluntary recognition based on showing of majority support among employees
- ▶ More commonly, election petition is filed with NLRB (only requires showing of support by at least 30% of employees)

# Election Issues

- ▶ Election bars
- ▶ Composition of “bargaining unit”
- ▶ “Employees” vs. “Supervisors”
- ▶ Election details (e.g., date, time, location)
- ▶ Unfair labor practice charges

# **“First Three Quarters’ Union Election Petitions Up 58%, Exceeding All FY21 Petitions Filed”**

NLRB Press Release – July 15, 2022

\*Fiscal Year began October 1, 2021

# Misc. “Union Election Petitions” Q1-Q3 FY22

- ▶ Amendment of Certification (AC): n=2
- ▶ Employer-Petitioned Election (RM): n=23
- ▶ Unit Clarification (UC): n=41
- ▶ Deauthorization of Union Shop (UD): n=15
- ▶ Certification of Representatives as Bona Fide: n=3
- ▶ Total: n=84

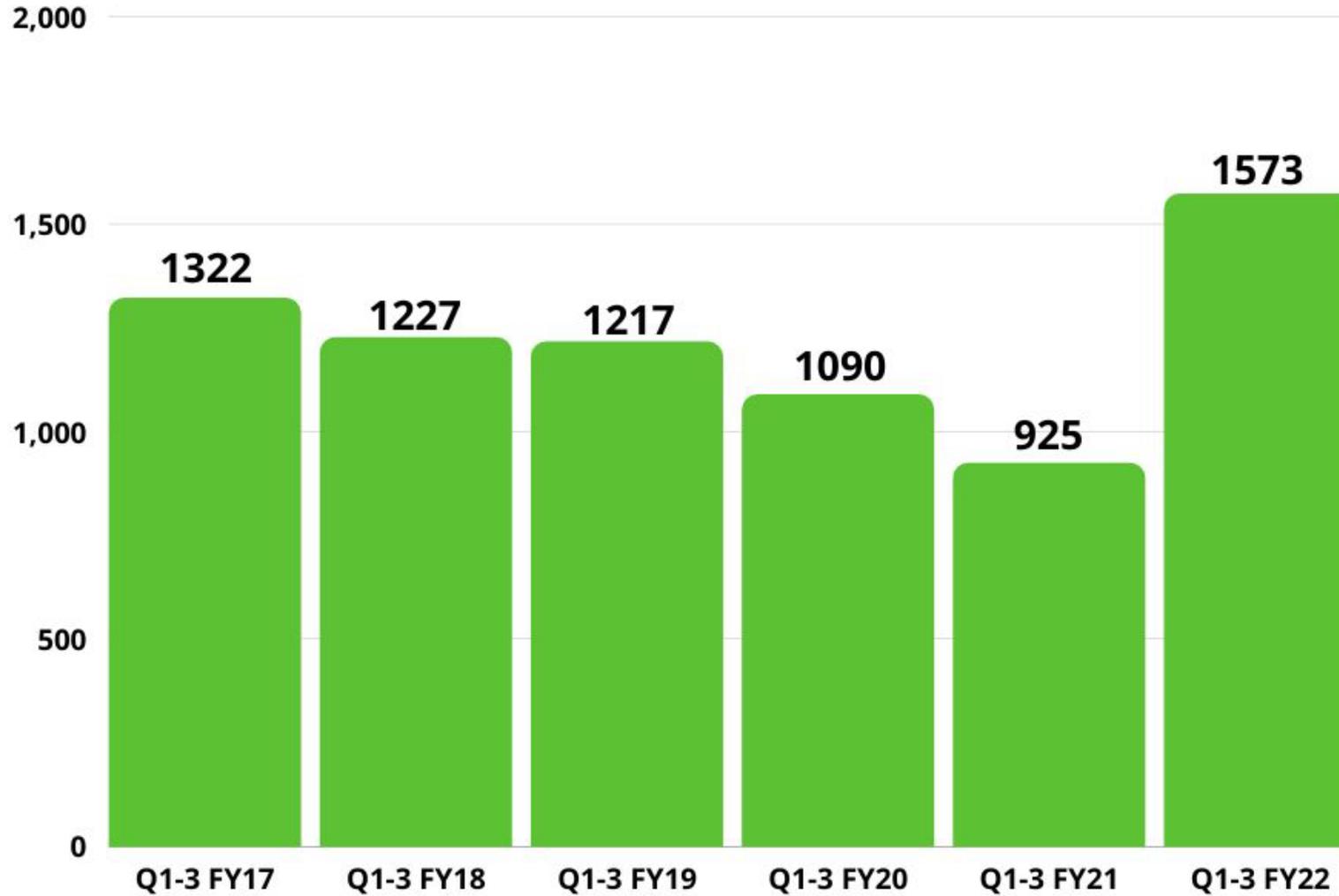
# Primary “Union Election Petitions” Q1-Q3 FY22

- ▶ Representation Election (RC): n=1573
- ▶ Decertification Petition (RD): n=236
- ▶ Total: n=1809

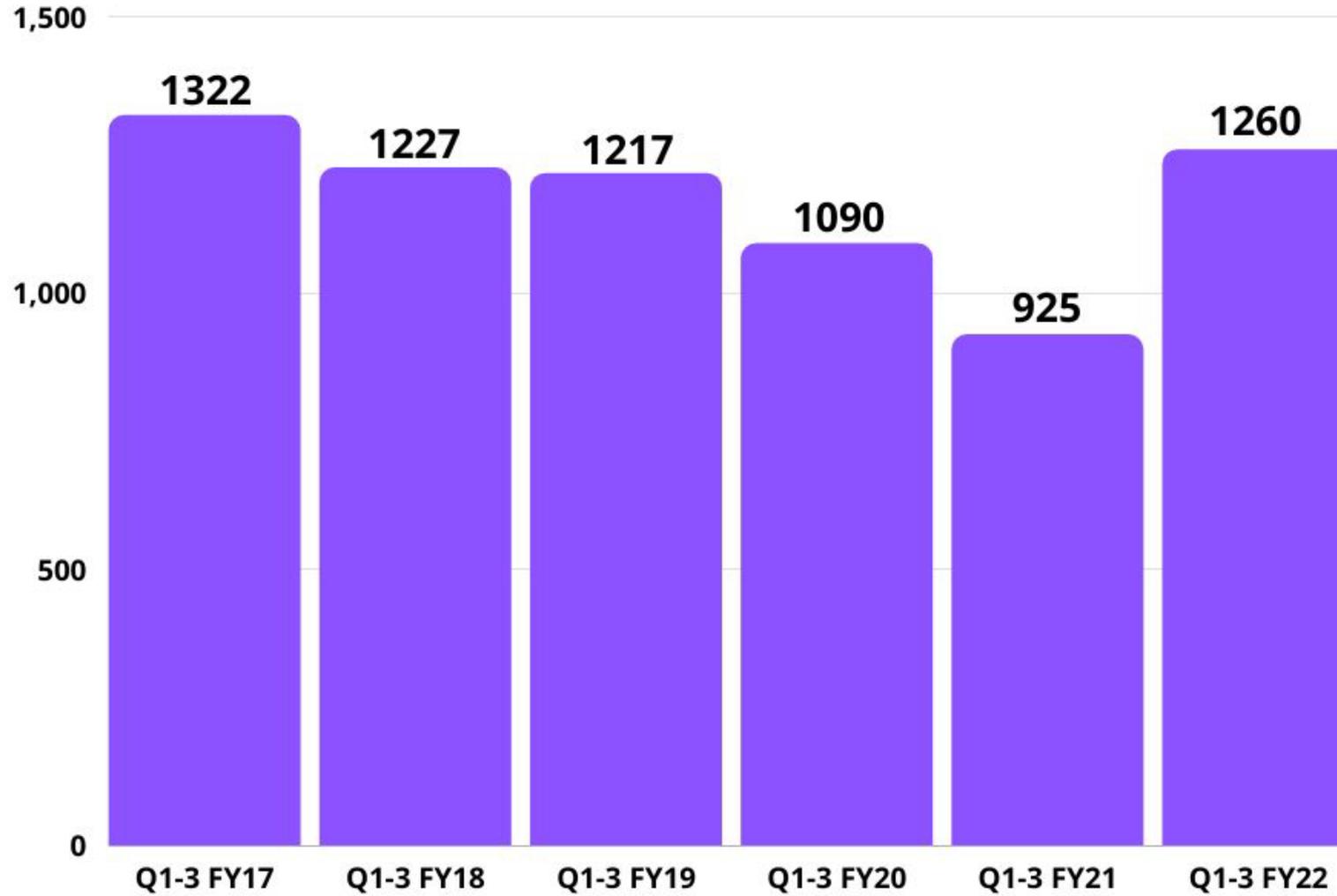
# Representation Elections

- ▶ Total increase of 70% compared to Q1-Q3 FY21
- ▶ 313 FY22 petitions involve Starbucks stores (20%)
- ▶ Non-Starbucks increase only 36%
- ▶ Non-Starbucks Q1-Q3 RC petitions close to pre-FY20 levels

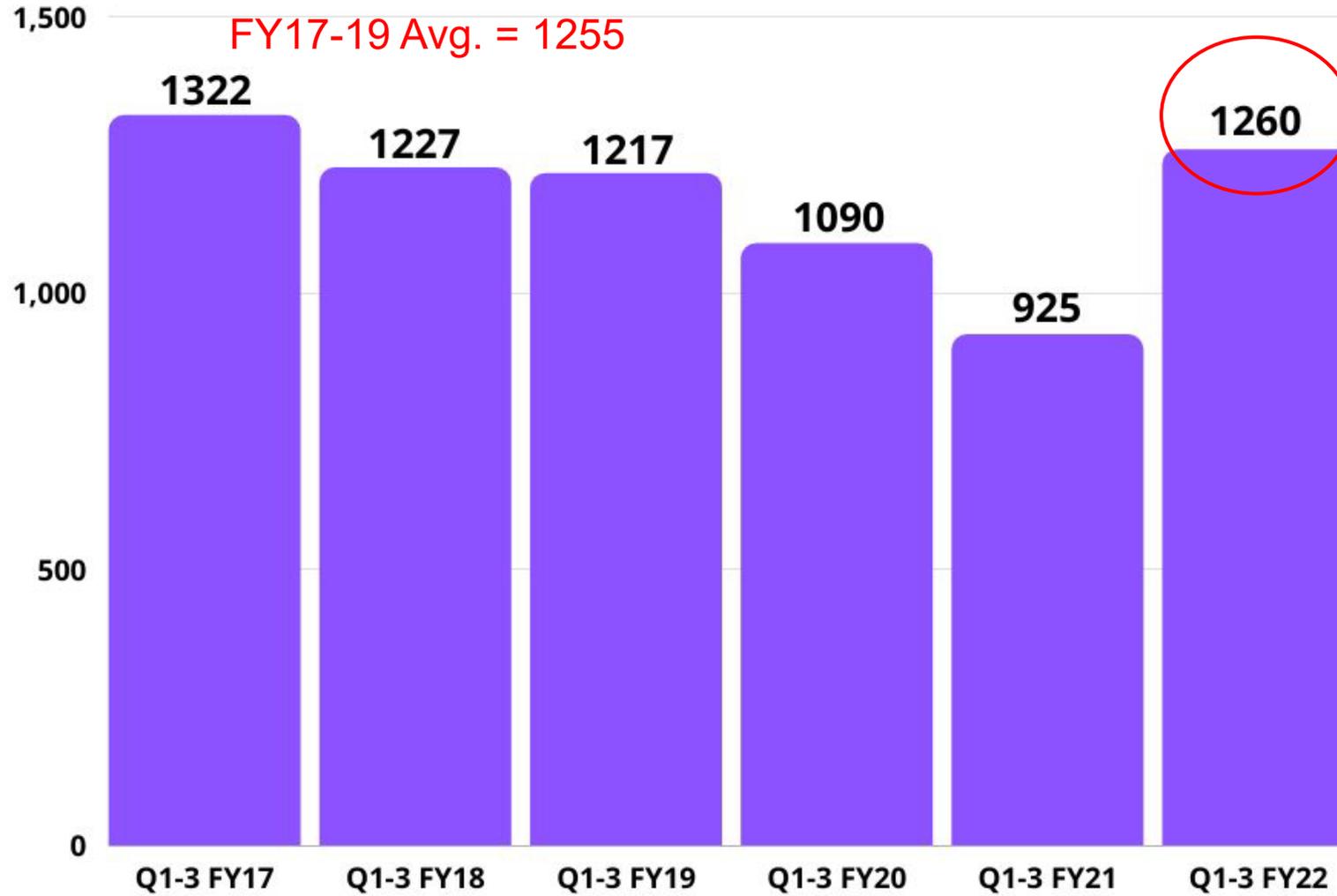
## NLRB Union Election Petitions Filed



## NLRB Union Election Petitions Filed (Excluding Starbucks)



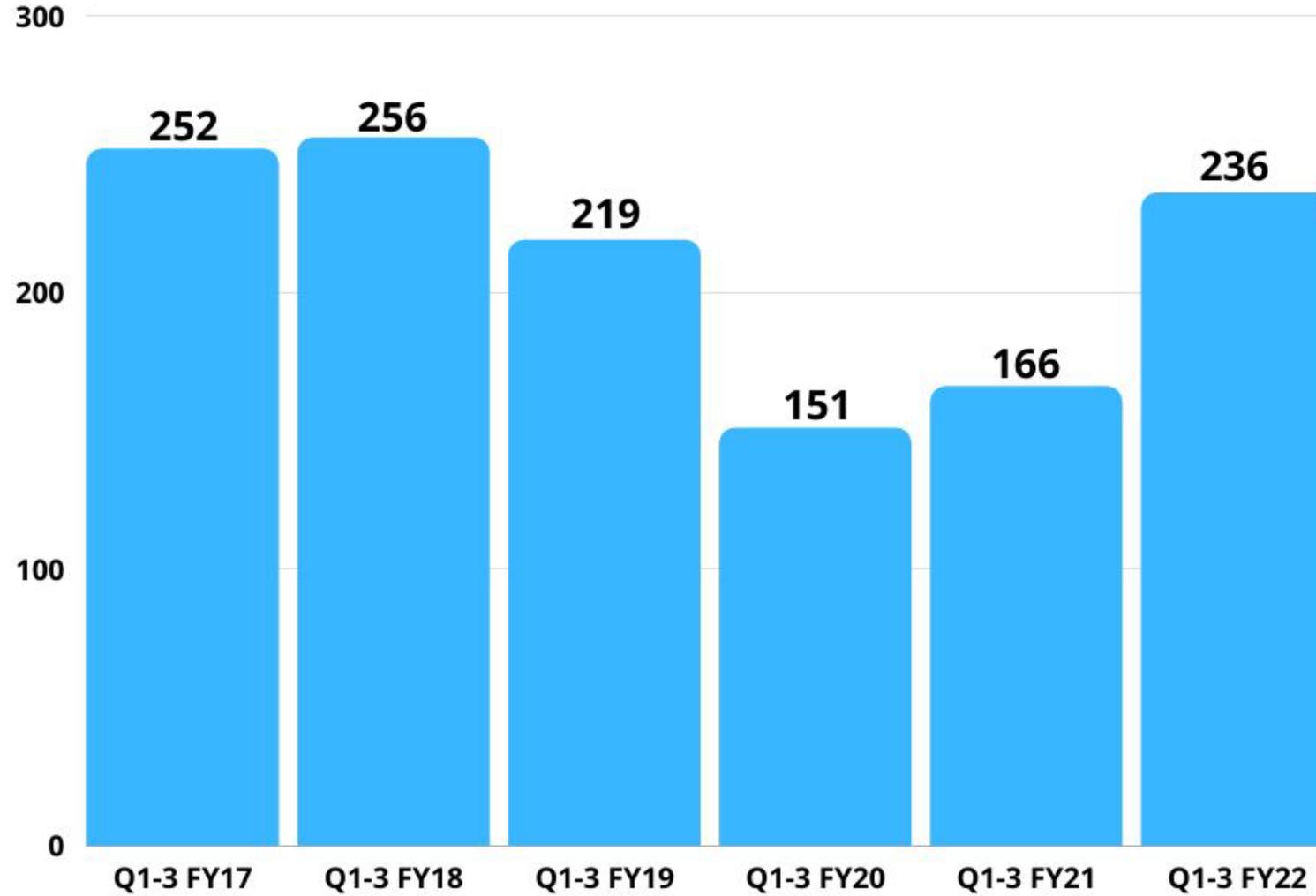
## NLRB Union Election Petitions Filed (Excluding Starbucks)



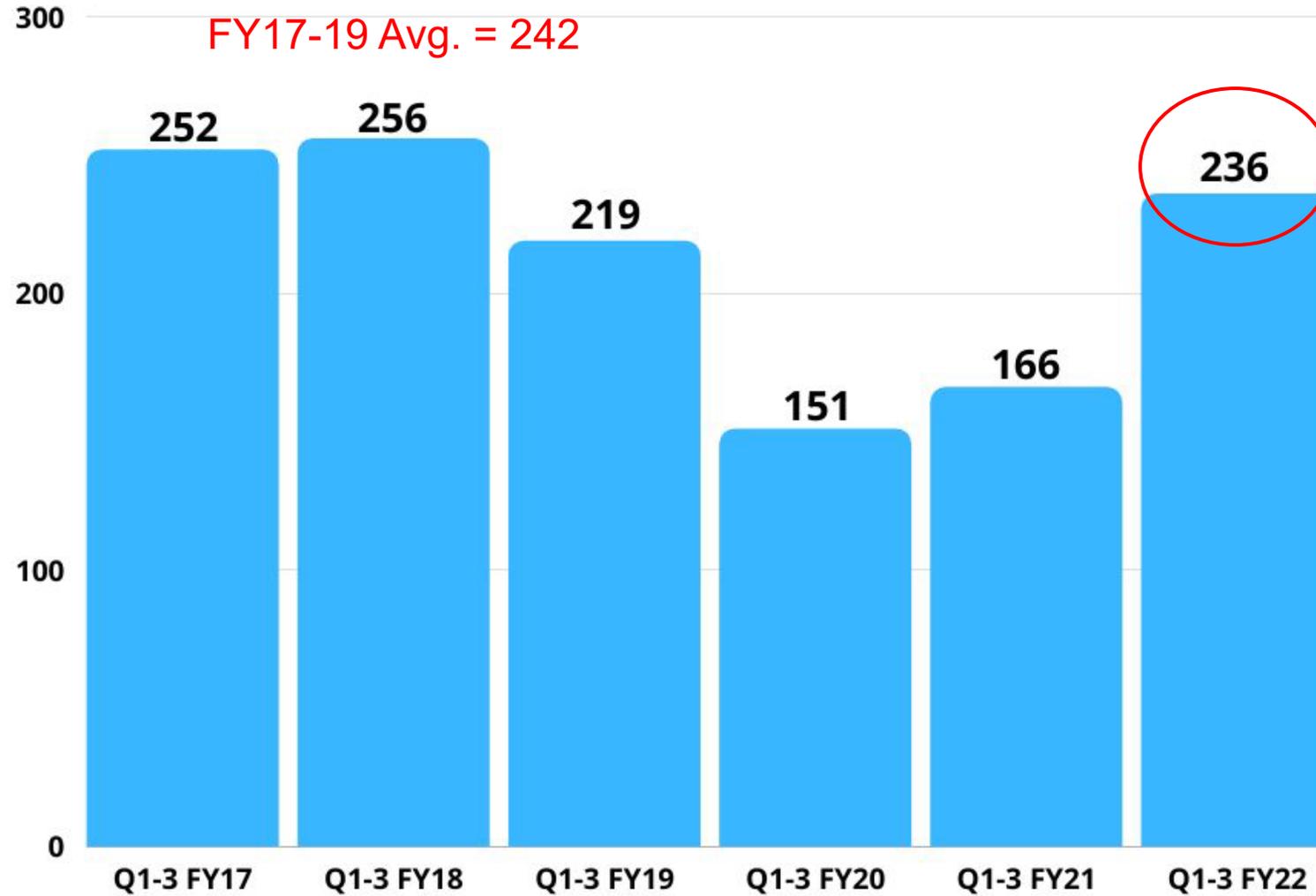
# Decertification Elections

- ▶ Up 42% compared to Q1-Q3 FY21
- ▶ No Starbucks impact
- ▶ Q1-Q3 RD petitions close to pre-FY20 levels

## NLRB Decertification Election Petitions Filed



## NLRB Decertification Election Petitions Filed



# Election Results

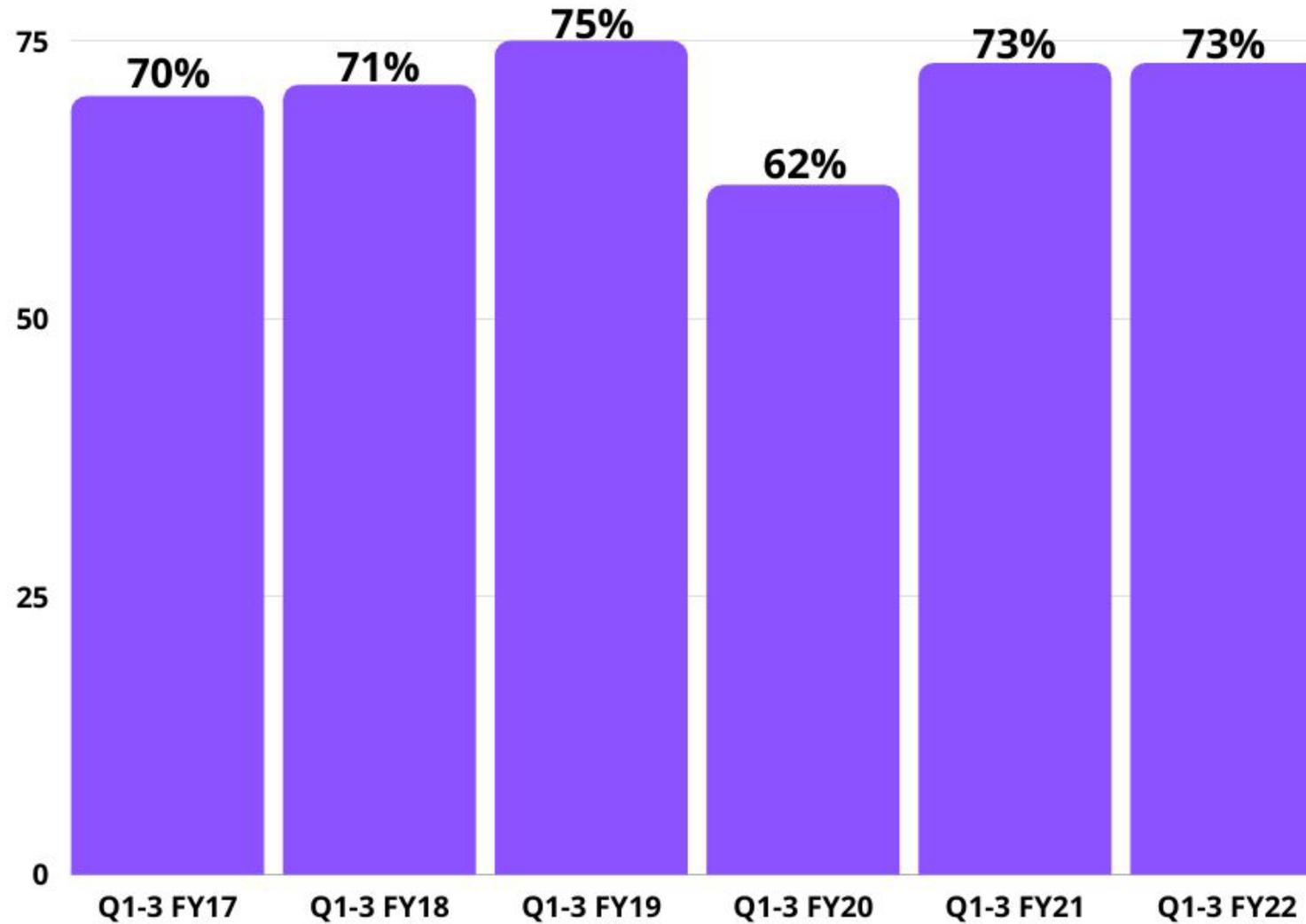
## Representation Elections

- ▶ Approximately 75% of representation election petitions result in election
- ▶ Unions win majority of representation elections, but only about half of RC petitions filed result in representation

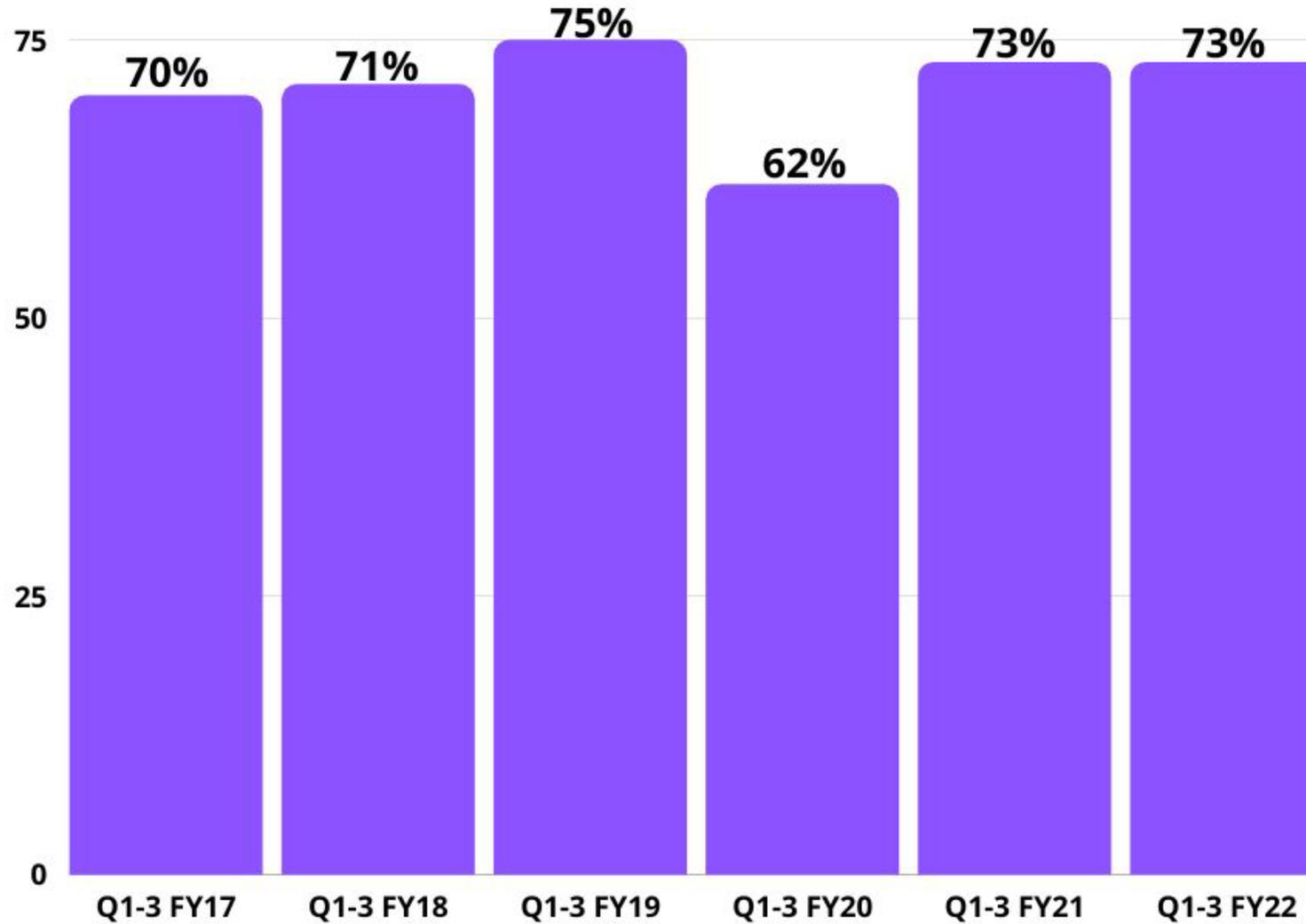
## Decertification Elections

- ▶ Less than 60% of decertification petitions result in election
- ▶ Unions lose majority of decertification elections, but only about 35% of RD petitions filed result in loss of union representation status

## Percentage of Representation Elections Won by Union (Excluding Starbucks)

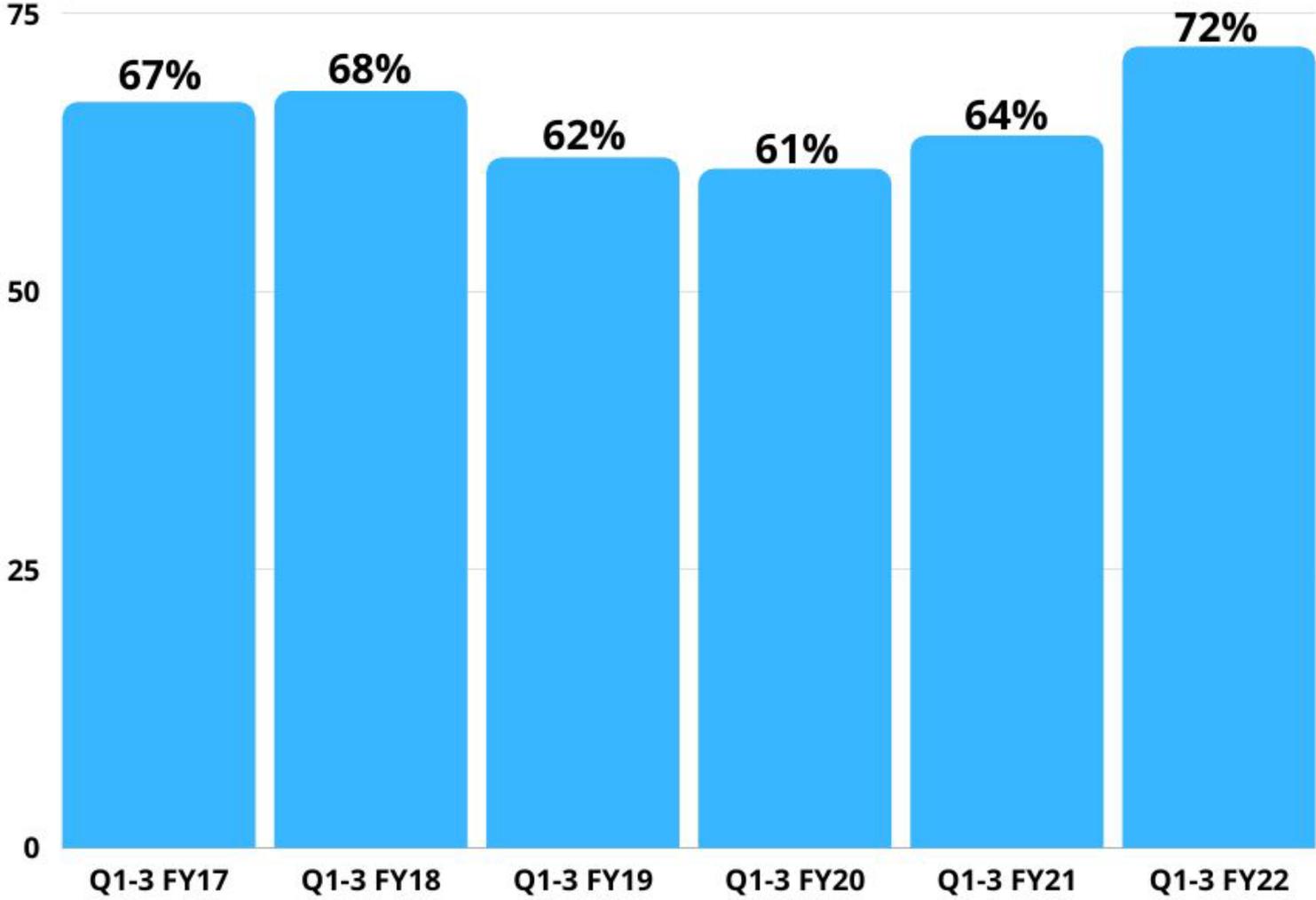


## Percentage of Representation Elections Won by Union (Excluding Starbucks)



Union has won 86% of Starbucks elections, resulting in total union win rate of 76% in FY22.

# Percentage of Decertification Elections Lost by Union



# Geographic Breakdown FY22 RC Petitions

## % of Total RC Petitions

California: 13.7%  
New York: 10.8%  
Illinois: 6.7%  
Pennsylvania: 6.3%  
Washington: 5.6%  
Oregon: 5.0%  
Massachusetts: 3.6%  
Maryland: 3.3%  
Minnesota: 3.2%  
New Jersey: 3.2%

## RC Petitions as % of Pop.

New York: +4.8%  
Oregon: +3.8%  
Washington: +3.3%  
Missouri: +2.6%  
Pennsylvania: +2.4%  
DC: +1.9%  
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Texas: -6.6%  
Florida: -4.5%  
North Carolina: -2.3%  
Georgia: -2.1%

# Bargaining Unit Size

## FY22 RC Petitions

- ▶ Mean unit size sought: 56 employees
- ▶ Mean unit size where union wins: 50 employees
- ▶ Mode unit size where union wins: 5 employees
- ▶ Median unit size where unions: 20 employees
- ▶ Average Starbucks unit size: 25 employees

# Staying Union-Free

- ▶ Treat employees with respect
- ▶ Listen to concerns
- ▶ Train managers
- ▶ Employers can present facts, opinions, and examples about unions, but can't threaten, interrogate, make promises, or engage in surveillance of unionizing efforts

# Responding to Election Petition

- ▶ Maintain status quo
- ▶ Educate supervisors on do's and don'ts
- ▶ Evaluate bargaining unit composition carefully
- ▶ Comply with deadlines and provide required information

# Decertification for Employers

- ▶ Must be initiated by non-supervisory employees
- ▶ Don't assist employees
- ▶ Maintain status quo
- ▶ Work with experienced labor counsel regarding potential withdrawal of recognition, obligation to continue bargaining, etc.
- ▶ Employer may be able to file petition upon unsolicited showing of loss of employee support of union

# Decertification Windows

- ▶ At least a year after union certification
- ▶ After union contract expires or has been in place for more than 3 years
- ▶ 90 to 60 days before expiration of contract or 3-year period
- ▶ 120-90 day window for healthcare providers

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# Questions?



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