Starbucks Corporation *and* Workers United.
Cases 07–CA–292971 and 07–CA–293916

August 9, 2023

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS WILCOX AND PROUTY

On October 7, 2022, Administrative Law Judge Geoffrey Carter issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] to amend the remedy,[3] and to adopt the recommended Order as modified and set forth in full below.

The judge found, among other things, that the Respondent violated Section 8(a)(3) and 8(a)(4) by discharging employee Hannah Whitbeck. As explained below, we adopt the judge's finding that the discharge violated the Act as alleged.

Background

The Respondent is engaged in the operation of public restaurants selling food and beverages throughout the United States, including, as relevant here, five stores in Ann Arbor, Michigan, one of which is located at 300 South Main Street (Main and Liberty).[4] These stores are

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In the absence of exceptions, we adopt the judge's dismissal of the allegations that the Respondent violated Sec. 8(a)(3), (4) and (1) by removing employee Hannah Whitbeck from her assignment of counting and distributing tips.

[3] We shall modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with our decision in in *Paragon Systems Inc*., 371 NLRB No. 104, slip op. at 3 (2022). In addition, in accordance with our decision in *Thryv, Inc*., 372 NLRB No. 22 (2022), we have amended the make-whole remedy and modified the judge's recommended Order to provide that the Respondent shall also compensate the employee for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Further, the Respondent excepts to the judge's ordering of a notice reading to remedy Whitbeck's unlawful discharge. Contrary to the judge, in the circumstances of this case, we find that the Board's standard remedies suffice to inform employees of the Respondent's unlawful conduct. In so doing, we observe that the circumstances of this case are distinguishable from those presented in *Gavilon Grain*, *LLC*, 371 NLRB No. 79 (2022), and *Absolute Healthcare d/b/a Curaleaf Arizona*, 372 NLRB No. 16 (2022), in which high-level management officials openly participated in a widely disseminated course of unlawful conduct. We have thus amended the judge's recommended remedy and Order to remove the notice reading. We shall substitute a new notice to conform to the Order as modified.

The General Counsel excepts to the judge's refusal to order a nationwide notice posting and the additional expansions in scope, content and duration of the posting sought by the General Counsel—specifically, an "Explanation of Rights" as well as the Notice posted for 90 days in all Michigan facilities and emailed to all employees at Whitbeck's store. In agreement with the judge, we find these remedies unwarranted here. The General Counsel also excepts to the judge's refusal to order the distribution, training, and front-pay-in-lieu-of-reinstatement remedies sought by the General Counsel. We agree with the judge that these additional remedies are not appropriate at this time and that standard remedies are sufficient to address the Respondent's unfair labor practices in this case.

Contrary to his colleagues, Member Prouty agrees with the judge that a notice reading by District Manager Paige Schmehl, or by a Board agent in Schmehl's presence, is warranted here. The Respondent, with direct involvement by Schmehl, who was the chief manager for the Respondent overseeing approximately 10 locations, including the discriminatee's, and corporate officials from the legal and human resources departments, discharged the employee who was viewed by her and her coworkers as the leader of the organizing effort in retaliation for her union activity and participation in the Board's processes. In Member Prouty's view, this conduct "struck at the heart of employees' Section 7 rights" and sent a message that employees who support the union do so at their peril. Although *Absolute Healthcare d/b/a Curaleaf Arizona*, supra, slip op. at 5 (ordering notice-reading where violations included the discharge of the sole union organizer), and *Gavilon Grain, LLC*, supra, slip op. 2 (ordering a notice reading where high-level management officials discharged an employee among the initiators of the union drive and made adverse changes to working conditions shortly after the union demanded recognition), involved unfair labor practices in addition to the discharge of a key union supporter, Member Prouty notes that "[t]he Board has long recognized that . . . unlawful terminations are destructive to Sec[.] 7 rights because they tend to instill fear in the remaining employees that, they will lose their employment if union activity persists." *Absolute*, supra slip op. at 5 (bracketing and ellipses in original; internal quotation omitted). In Member Prouty's view, the reading of the notice in a group setting would be far more likely than a notice posting to dissipate the fear that the discharge of this key union supporter likely engendered in this store of approximately 25 employees. Member Prouty would also require the Board agent to distribute the notice to employees at the meeting before the reading. See his concurrence in *Gavilon Grain LLC*, supra, slip op. at 2 fn. 5. For the reasons stated in his concurrence in *CP Anchorage 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151, slip op. at 9–15 (2022), Member Prouty would make a reading of the notice to employees at a group meeting, accompanied by the distribution of the notice at the meeting, a standard remedy for unfair labor practices found by the Board.

[4] The other relevant store locations are at South University, Zeeb Road, State and Liberty, and Washtenaw Avenue.

part of a District of approximately 10 stores in Ann Arbor and the surrounding area, overseen by Respondent's District Manager, Paige Schmehl. Hannah Whitbeck was a shift supervisor at the Respondent's Main and Liberty store. Whitbeck reported directly to the Store Manager, Erin Lind, who in turn reports to Schmehl.

In about January 2022,[5] Whitbeck, in collaboration with a coworker, initiated a union organizing effort at her store by contacting Workers United (the Union). Whitbeck and her coworkers viewed her as the lead organizer at the Main and Liberty store. Whitbeck became visible as a union advocate to the Respondent when, on February 4, she began wearing a union button at work and sent a letter, signed by her and a handful of coworkers to the Respondent's CEO, requesting that the Respondent voluntarily recognize the Union as their collective-bargaining representative.

On February 8, the Union filed a petition to represent the employees at Main and Liberty. Contemporaneously, the Union filed petitions to represent the employees at three other Ann Arbor stores, including its store on Zeeb Road.[6] The Respondent actively opposed the Union's coordinated organizing effort among the Ann Arbor stores in Schmehl's District.

The Board held a representation hearing via Zoom from March 2 to March 4 covering the petitions for the five Ann Arbor locations. Whitbeck attended the last day of the hearing and was noticed by Schmehl, who was also present for 10–15 minutes of the hearing. On March 20, employees at the Respondent's Zeeb Road store held a "sip-in" event in support of the union organizing effort there, during which volunteers handed out Union buttons and "post it" notes to customers entering the store to encourage them to post supportive comments regarding the organizing campaign on the store's community board. Whitbeck was on duty at Main and Liberty and did not participate, but Schmehl attended this 3-hour event, periodically removing "post it" notes from the board. Thereafter, on March 23, the Union filed a charge against the Respondent referencing Whitbeck, which the Respondent received on March 28.[7]

During this same time period, the Respondent was investigating an incident involving Whitbeck's violation of the Respondent's "two-employee" rule. The rule requires that there be two employees in a store at all times. As discussed in detail in the judge's decision, on February 27, Whitbeck departed work promptly at her scheduled leave time although the other shift supervisor on duty (with whom she had a dispute earlier in the shift) had not yet returned from his break, leaving the barista on duty alone in the store until the other shift supervisor returned. After learning from the barista on duty, via text message, that he had been alone in store for over a half hour, Whitbeck filed an incident report the following day.[8]

District Manager Schmehl oversaw the investigation of the incident with guidance from the Respondent's Partner Relations Support Center (PRSC), which handles human resources matters, and the Respondent's legal department.[9] The Respondent's corrective action policy states generally that "the form of the corrective action taken will depend on the seriousness of the situation and the surrounding circumstances." The Respondent also maintains a nonbinding job aid that recommends a final warning for "two employee"-rule violations. Consistent with the job aid, a former store manager at Main and Liberty, Laura Gibbons, testified that, in consultation with PRSC, she issued a final warning to a shift supervisor (A.H.) in 2021 for violating the "two employee" rule. Nevertheless, on March 21, Schmehl recommended that Whitbeck be discharged for violating the rule.

The Respondent's legal department authorized Whitbeck's discharge on April 3. Schmehl testified that the final discharge decision was a product of her collaboration with PRSC and the Respondent's legal team. It is undisputed that the Respondent has not discharged any other employees at any of its Michigan locations for violating the "two employee" rule.

Discussion

Applying *Wright Line*,[10] the judge found that the Respondent violated Section 8(a)(3) and 8(a)(4) of the Act by discharging Whitbeck on April 11. Under *Wright Line*,

[5] All subsequent dates are in 2022 unless otherwise noted.

[6] In addition, on January 31, the Union had filed a petition to represent employees at the Washtenaw Avenue store.

[7] The charge alleged that the Respondent had unlawfully changed Whitbeck's job responsibilities by removing her from tip distribution duty on March 21. This allegation was included in the Consolidated Complaint in this case but dismissed by the judge. As noted, there are no exceptions to the judge's dismissal of this allegation.

[8] Whitbeck stated in her incident report that she had "something serious" after work that required her to leave promptly and that she had asked the other shift supervisor to be back from his break by 7 p.m. in order that she could do so. According to Whitbeck, he did not respond to that request. Although Store Manager Lind met with Whitbeck to discuss the incident, she did not ask about the circumstance that necessitated Whitbeck's prompt departure. Schmehl testified that this "would've been considered during the investigation"; yet, neither she nor Lind followed up with Whitbeck in this regard. At trial Whitbeck explained that her uncle had had a heart attack earlier that day and she was going to visit him.

[9] At Schmehl's instruction, guided by her consultation with PRSC, Store Manager Lind took statements from the other shift supervisor and the barista who had been left alone in the store.

[10] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The Board applies *Wright Line* in considering alleged violations of Sec. 8(a)(3) and 8(a)(4). See, e.g., *Freightway Corp*., 299 NLRB 531, 532 fn. 4 (1990).

the General Counsel bears the initial burden of establishing that an employee's union or other protected activity was a motivating factor in the employer's adverse employment action. The General Counsel meets this burden by proving that (1) the employee engaged in union or other protected activity, (2) the employer knew of that activity, and (3) the employer bore animus against union or other protected activity.[11] An employer's motivation is a question of fact that may be inferred from both direct and circumstantial evidence on the record as a whole.[12] Circumstantial evidence of discriminatory motive may include, among other factors, the timing of the action in relation to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee.[13] Once the General Counsel sustains her initial burden under *Wright Line*, the burden shifts to the employer to show that it would have taken the same action even in the absence of the protected activity.

Regarding the General Counsel's initial burden, as the judge made clear, there is no dispute that Whitbeck had engaged in protected activity, including supporting the Union and participating in Board proceedings, and that the Respondent was aware of such activities at the time it discharged her on April 11. In addition, in finding that the Respondent acted with animus in discharging Whitbeck, the judge relied upon (1) District Manager Schmehl's activity during the March 20 "sip-in" event at Zeeb Road, which the judge found arguably created an impression of surveillance, (2) the Respondent's disparate treatment of Whitbeck as compared with lesser discipline of another shift supervisor and the recommended corrective action set forth in Respondent's job aid, (3) the Respondent's deviation from its investigative practice in determining the level of discipline for Whitbeck, and (4) timing. As explained below, we agree with the judge that these factors provide ample evidence that the Respondent's animus was a motivating factor in Whitbeck's discharge.

In adopting the judge's finding that District Manager Schmehl's activity during the March 20 "sip-in" at the Respondent's Zeeb Road store supports an inference of unlawful motivation by the Respondent, we note that Schmehl's only discernable work activity during her unusual and unexplained 3-hour presence at the store was to remove "post it" notes from the community board, a task that the acting store manager clearly could have performed without assistance. Although there is no allegation in the complaint that Schmehl's actions created an impression of surveillance, and we do not find such an independent Section 8(a)(1) violation here, Schmehl's conduct nevertheless sheds light on the Respondent's unlawful motive in discharging Whitbeck. See *Brink's, Inc.*, 360 NLRB 1206, 1206 fn. 3 (2014) (conduct that exhibits animus but is not independently alleged as unlawful may "shed light on the motive for other conduct that is alleged to be unlawful"). Moreover, we reject the Respondent's contention that the incident is irrelevant because Whitbeck did not participate in the sip-in. In this regard, we find the larger context here significant: on February 8, the Union had filed petitions to represent the Zeeb Road employees and the employees at Whitbeck's "home" store, along with petitions at two other Ann Arbor stores in Schmehl's District, and had filed a petition at a fifth Ann Arbor store only a few days earlier, on January 31. The Respondent actively opposed this coordinated organizing effort in which Whitbeck played a visible part.

We further agree with the judge that the Respondent subjected Whitbeck to disparate treatment in discharging her. Specifically, the Respondent departed from its job aid's recommendation of a final warning for violations of the "two employee" rule and from its history of issuing a final warning for a previous violation of the "two employee" rule. Even assuming, as the Respondent contends, that Schmehl was unaware of the previous lesser discipline issued to another shift supervisor who violated the "two employee" rule, that fact does not undercut a finding of disparate treatment here given the participation of multiple overlapping decisionmakers. See, e.g., *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016)

[11] *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 1, 6 (2019) (clarifying that "the evidence of animus must support finding that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee"). Member Wilcox notes her agreement with Chairman McFerran's concurring opinion in *Tschiggfrie*, wherein she found the majority's "clarification" of *Wright Line* principles was unnecessary as the "concepts [discussed by the majority there] are already embedded in the *Wright Line* framework and reflected in the Board's body of *Wright Line* cases." Id., slip op. at 10.

[12] See, e.g., *Tschiggfrie Properties*, 368 NLRB No. 120, supra, slip op. at 3, 8, and cases cited there.

[13] In determining whether circumstantial evidence supports a reasonable inference of discriminatory motive, the Board does not follow a rote formula and has relied on many different combinations of factors. See, e.g., *United Scrap Metal PA, LLC*, 372 NLRB No. 49, slip op. at 3 (2023); *Cintas Corp. No. 2*, 372 NLRB No. 34, slip op. at 6–7 (2022); *Security Walls, LLC*, 371 NLRB No. 74, slip op. at 4 (2022); *BS&B Safety Systems, LLC*, 370 NLRB No. 90, slip op. at 1–2 (2021); *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 2–3 & fn. 6 (2020), enfd. 5 F.4th 759 (7th Cir. 2021); *Tschiggfrie Properties*, 368 NLRB No. 120, supra, slip op. at 4, 8; *Kitsap Tenant Support Services*, 366 NLRB No. 98, slip op. at 12 (2018); *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003).

(rejecting respondent's argument that absence of evidence that decisionmakers were aware of prior inconsistent discipline undercut the disparate treatment finding). Indeed, Schmehl admitted that the Respondent's Partner Relations Support Center (PRSC), which handles human resources issues and was involved in the previous discipline, collaborated with her in the final determination to discharge Whitbeck. Compare *New Otani Hotel & Garden*, 325 NLRB 928, 928 fn. 2 & 942 (1998) (no disparate treatment warranting inference of unlawful motive where multiple decision makers' testimony established that *none* was aware of previous instances of misconduct similar to that which prompted alleged unlawful discipline). On these facts, we find, in agreement with the judge, that the Respondent's disparate treatment of Whitbeck supports an inference of unlawful motive.

Moreover, we agree with the judge's finding that the Respondent's failure to consider surrounding circumstances in evaluating the appropriate discipline for Whitbeck lends further support to the inference of unlawful motive here. We rely both on the language of the Respondent's corrective action policy—i.e., "the form of the corrective action taken will depend on the seriousness of the situation and the surrounding circumstances"—and on Schmehl's testimony that the Respondent's practice was consistent with that policy. See *Baxter Healthcare Corp.*, 310 NLRB 945, 945–946 (1993) (relying on testimony of respondent's own officials regarding investigative practice in concluding that failure to follow that practice supported inference of unlawful motive), enfd. in relevant part mem. 1994 U.S. App. LEXIS 4426 (4th Cir. 1994). Indeed, Schmehl specifically asserted that Whitbeck's reasons for her prompt departure at the end of her shift, which resulted in her leaving a partner alone in the store, would have been considered during the investigation. Yet, as the judge found, the Respondent entirely failed to follow up on Whitbeck's indication in her incident report that she had "something serious" after work that necessitated her prompt departure.

Finally, we agree with the judge that the timing also supports the inference that Whitbeck's discharge was unlawfully motivated. In so finding, we note that Schmehl recommended Whitbeck's discharge the day after her unusual activity in observing the "sip-in" at Zeeb Road and only 2-1/2 weeks after she noted Whitbeck in attendance at the Board's representation hearing on the petitions pending in Schmehl's district, including those for Zeeb Road and Whitbeck's home store. See, e.g., *World SS, Inc.*, 335 NLRB 1203, 1205–1206 (2001) (timing of adverse action roughly 2 weeks after the respondent learned of the union activity and only 1 day after other unlawful conduct by respondent supports inference of unlawful motive); see also *WGOK, Inc.*, 152 NLRB 959, 959 & 966 (1965) (discriminatee's participation in Board representation hearing constituted "activity on behalf of the Union" and his discharge shortly afterward violated Section 8(a)(3) and (4)). Unlike the judge, we further rely on the timing of the discharge in relation to the Union's filing of an unfair labor practice charge naming Whitbeck. It is undisputed that the Respondent's legal department—which, by Schmehl's own admission, also participated in the discharge decision—did not authorize the discharge until April 3, nearly 2 weeks after Schmehl recommended it and only 5 days after the Respondent received the charge. See, e.g., *S. Freedman & Sons, Inc.*, 364 NLRB 1203, 1206 (2016) (discharge of principal union advocate within 5 days of hearing on his unfair labor practice charge supports finding Section 8(a)(4) violation), enfd. 713 Fed.Appx. 152 (4th Cir. 2017).

Based on the foregoing, we find, in agreement with the judge, that the General Counsel sustained her initial burden under *Wright Line* of proving that the Respondent's discharge of Whitbeck was unlawfully motivated. Having done so, we turn to the Respondent's *Wright Line* defense burden. In finding that the Respondent did not meet its defense burden here, the judge noted that the Respondent asserted that it discharged Whitbeck for "knowingly" violating the "two employee" rule, but found that the Respondent failed to present any evidence that discharge would be the appropriate level of discipline for a "knowing" violation. In addition, the judge relied on the lack of comparator evidence from the Respondent that it had discharged other employees for violating the "two employee" rule. Further, the judge relied on the fact that Respondent's disciplinary job aid recommends a final written warning, not discharge, for violations of the "two employee" rule. For the reasons stated by the judge, we agree that the Respondent failed to establish that it would have discharged Whitbeck even absent her Section 7 and other protected activity. In particular, in the absence of evidence that any other employee in one of the Respondent's Michigan stores ever had been discharged for violating the rule, we agree with the judge that the Respondent failed to establish that it would have discharged Whitbeck for violating the "two employee" rule even absent her protected activity. See *Tschiggfrie Properties*, 368 NLRB No. 120, supra, slip op. at 5 (employer failed to meet defense burden, in part, based on absence of evidence that any other employee had previously been discharged for misconduct on which the employer relied).

Having found, in agreement with the judge, that the General Counsel sustained her initial burden under *Wright Line* and that the Respondent failed to establish that it would have discharged Whitbeck even absent her

protected activities, we adopt the judge's findings that the Respondent violated Section 8(a)(3) and (4) by discharging Whitbeck on April 11.

ORDER

The National Labor Relations Board orders that the Respondent, Starbucks Corporation, Ann Arbor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees for supporting Workers United or any other labor organization.

(b) Discharging or otherwise discriminating against employees for participating in National Labor Relations Board processes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Hannah Whitbeck full reinstatement to her former job or, if that no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed.

(b) Make Hannah Whitbeck whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the discrimination against her in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge and, within 3 days thereafter, notify the employee in writing that this has been done and that the discharge will not be used against her in any way.

(d) Compensate Hannah Whitbeck for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(e) File with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Hannah Whitbeck's corresponding W-2 forms reflecting the backpay award.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Main and Liberty facility in Ann Arbor, Michigan, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the facility at any time since April 11, 2022.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. August 9, 2023

[14] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Lauren McFerran, Chairman

Gwynne A. Wilcox, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Workers United or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against any of you for participating in National Labor Relations Board processes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days of the Board's Order, offer Hannah Whitbeck full reinstatement to her former job or, if that no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Hannah Whitbeck whole for any loss of earnings and other benefits resulting from her discharge less any net interim earnings, plus interest, and WE WILL also make such employee whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Hannah Whitbeck for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 7, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Hannah Whitbeck's corresponding W-2 forms reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Hannah Whitbeck, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

STARBUCKS CORPORATION

The Board's decision can be found at www.nlrb.gov/case/07-CA-292971 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Patricia Fedewa and *Larry Smith, Esqs.,* for the General Counsel.

Eric Hult, Kevin Kraham, and *Laura Spector, Esqs*., for the Respondent.

David Lichtman, Esq., for the Charging Party.

DECISION

GEOFFREY CARTER, Administrative Law Judge. The General Counsel contends that Starbucks Corporation (Respondent) violated the National Labor Relations Act (the Act) by, in March 2022, removing employee Hannah Whitbeck from her assignment of counting and distributing tips, and by discharging Whitbeck in April 2022. The General Counsel maintains that

Respondent took those actions because Whitbeck engaged in union and protected concerted activities, and also (as to the discharge) because Whitbeck participated in Board proceedings. As explained below, I have determined that Respondent violated the Act, but only by unlawfully discharging Whitbeck.

STATEMENT OF THE CASE

This case was tried in Detroit, Michigan on August 1–4, 2022.[1] Workers United (Union or Charging Party) filed the charge in Case 07–CA–292971 on March 23, 2022, and filed the charge in Case 07–CA–293916 on April 13, 2022.[2] The General Counsel issued a consolidated complaint on June 27, 2022, and amended the complaint during trial on August 1, 2022.

In the complaint, the General Counsel alleged that Respondent violated Section 8(a)(3), (4), and (1) of the Act by: (a) on about March 21, 2022, removing employee Hannah Whitbeck's job assignment of distributing tips to employees because she assisted and supported the Union and engaged in protected concerted activities; and (b) on about April 11, 2022, discharging Whitbeck because: she assisted and supported the Union and engaged in protected concerted activities; she was subpoenaed to testify in a Board hearing in Case 07–RC–290295; she attended a Board proceeding in Case 07–RC–290295; and the Union filed the unfair labor practice charge in Case 07–CA–292971 on Whitbeck's behalf. Respondent filed a timely answer denying the alleged violations in the complaint.

On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT[4]

I. JURISDICTION

Respondent, a corporation with an office and place of business in Ann Arbor, Michigan, operates public restaurants selling food and beverages. In 2021, Respondent derived gross revenues in excess of $500,000 and purchased and received goods at its store in Ann Arbor, Michigan that are valued in excess of $5000 and came directly from points outside the State of Michigan. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

1. Respondent's employees and managers

Employees, also called "partners," at Respondent's stores work in the following roles (among others):

> Barista: A barista is responsible for preparation of hot and cold beverages, cash register transactions, store cleanliness, product merchandising and excellent customer service. A barista generally works fewer than 40 hours per week.
>
> Shift supervisor: A shift supervisor performs all the duties of a barista, as well as helping guide the work of others and assisting with ordering and accounting. A shift supervisor generally works fewer than 40 hours per week.
>
> Store manager: The store manager is ultimately in charge of all store operations and directs the work of . . . shift supervisors and baristas. The store manager is responsible for personnel decisions, scheduling, payroll and fiscal decisions. A store manager is considered full-time and is generally scheduled to work at least 40 hours each week.

(R. Exh. 17 at 61; R. Exh. 18 at 8, 13; GC Exhs. 4, 38–39; Tr. 30, 39–41, 349–350; see also GC Exh. 39(a) (noting that the store manager "is required to regularly and customarily exercise discretion in managing the overall operation of the store," including supervising and directing the work force, making staffing decisions, ensuring customer satisfaction, managing the store's financial performance, and managing the safety and security within the store); Tr. 350, 599 (noting that the shift manager is in charge of the store when the store manager is not present).)

From February through April 2022, the store manager position at the "Main and Liberty"[5] Starbucks location in Ann Arbor went through several transitions. Laura Gibbons served as store manager until February 8, 2022. After Gibbons departed for other employment, the following individuals served as store manager:

Erin Lind:	February 7 to March 7, 2022 (Lind served as a dual store manager, working as store manager at both the "South University" store and the Main and Liberty store in Ann Arbor)[6]
Robert Prince:	March 7 to March 17, 2022
Erin Lind:	March 17 to March 28, 2022 (dual store manager)
May Gonzalez:	March 28 through at least April 2022

[1] Consistent with agency guidelines for in-person hearings at the time, all participants and observers wore masks during the trial because Wayne County, Michigan had a "High" Covid–19 community level as determined by the Centers for Disease Control and Prevention (CDC).

[2] All dates are in 2022, unless otherwise indicated.

[3] The transcripts and exhibits in this case generally are accurate, but to the extent that I identified transcript corrections during my review of the record, I have noted those corrections in Appendix B to this decision. I also note that the exhibit file erroneously includes Respondent Exhibit 24, which was not offered into evidence and is not part of the evidentiary record. (See Tr. 656–659, 740.)

[4] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

[5] The Main and Liberty store is located at 300 South Main Street in Ann Arbor, Michigan and has approximately 25 employees. (Tr. 30, 286–287.)

[6] Both Gibbons and Lind were at the Main and Liberty store on February 7, 2022. (See GC Exh. 37 (February 7, 2022 corrective action form that both Gibbons and Lind signed).)

(Tr. 13–14, 28, 30–31, 94–95, 97–99, 200, 207, 248–249, 282, 285, 522–523, 619, 634, 646–647; see also Tr. 95–96, 99, 244 (noting that when Lind served as dual manager, she devoted approximately 20–25 hours per week to her "home store" at South University, and approximately 15–20 hours per week to the Main and Liberty store).)

Store managers report to a district manager who (among other duties) supports store managers in creating the Starbucks experience for customers and partners. On about February 7, 2022, Paige Schmehl began working as the district manager for District 366, which covers around 10 stores in the Ann Arbor area, including the Main and Liberty store. (Tr. 29, 52–53, 148–149, 596–599.)

2. Scheduling and job assignment practices

Store managers are responsible for creating the weekly employee schedule. In general, store managers draft the schedule for a given week about 3 weeks in advance (e.g., the schedule for the week of March 28, 2022, would be drafted on March 7, 2022), considering factors such as requests for time off and the schedules from previous weeks. (R. Exh. 17 at 77, 18 at 15; Tr. 99–100, 120.)

In addition to deciding what days and hours employees will work in a given week, the store manager will also schedule employee breaks (paid and 10 minutes long), mealtimes (generally unpaid and 30 minutes long), and training. The scheduled times for breaks and mealtimes are recommendations, as Respondent expects all employees to consider the needs of the store before taking their breaks or meals. For shift supervisors, the store manager will also: schedule non-coverage time when the shift supervisor may be in the back room handling duties away from the sales floor (e.g., counting and distributing tips, or placing and receiving orders); and identify when the shift supervisor is the key holder. (R. Exhs. 1, 17 at 79–80, 18 at 15–16; Tr. 123, 219, 285–286, 358–362, 459, 479–481, 662–663; see also Tr. 84, 407–408 (noting that employees have an area to eat if they wish to stay in the store while taking their meal break).)

Once the schedule has been drafted, the store manager will post a copy of the schedule in the back of the store. The posted schedule generally lists only each employee's assigned work shifts and does not specify breaks, mealtimes, or most other assignments (though assignments to other store locations are generally noted on the posted schedule). Respondent does, however, provide information about breaks, mealtimes, and other employee assignments on the daily coverage report (DCR) that is posted on Monday of the applicable work week. (GC Exh. 46; R. Exhs. 17 at 76, 18 at 14; Tr. 120–121, 123, 221–222, 285–286, 357–359, 361–362, 458–459, 478–479.)

Shift supervisors have additional responsibilities that may not appear on the schedule or daily coverage report. For example, a shift supervisor may have the role of "play caller," which requires the shift manager to decide which baristas should handle each of the various duties in the store. If two or more shift supervisors are on duty at the same time, the shift supervisors do not have authority over each other and decide amongst themselves who will handle the various shift supervisor duties. If, on the other hand, one shift supervisor arrives to replace another shift supervisor who is finishing their shift, then the two individuals should engage in a "handoff" that includes the outgoing shift supervisor handing over certain store keys and providing a verbal status report on the store and its operations. (Tr. 35–38, 245–246, 346, 348–352, 406, 599–601, 661–662, 700–701.)

The evidentiary record does not include a written policy that addresses whether, and under what circumstances, an employee may continue working after the time when their shift is scheduled to end. Informally, Respondent has not objected when employees have (without prior authorization) worked a few minutes past the end of their shift, provided that employees do not abuse that flexibility or work overtime (overtime begins when an employee exceeds 40 hours in a particular week and does require prior authorization). The messaging on that point, however, has not been consistent. There is no evidence that Respondent specifically advised employees before February 27, 2022, about when they were permitted to work after their shift was scheduled to end, and in late February or early March 2022, Lind and Schmehl told employee Scott Screws that employees should not work outside of their scheduled hours. (Tr. 219–220, 227–228, 273, 300–301, 333–334, 355–357, 408–409, 544, 553–554; see also Tr. 228 (noting that baristas may stay longer than a few extra minutes if they obtain approval from the shift supervisor, while shift supervisors may stay longer based on their own discretion).)

3. Discipline policy and practices

As explained in Respondent's policies regarding discipline or corrective action, "[c]orrective action communicates to the partner that performance problems exist or that the partner is engaging in unacceptable behavior. The intent of corrective action is to give the partner a reasonable opportunity to re-establish an acceptable level of performance or behavior." (R. Exh. 17 at 108 (Partner Resources Manual); R. Exh. 18 at 47 (Partner Guide).)

"Corrective action may take the form of a verbal warning, a written warning, demotion, suspension or separation from employment. The form of corrective action taken will depend on the seriousness of the situation and the surrounding circumstances. The evaluation of the seriousness of the infraction and the form of the corrective action taken will be within the sole discretion of Starbucks. There is no guarantee that a partner will receive a minimum number of warnings prior to separation from employment or that corrective action will occur in any set manner or order." (R. Exh. 17 at 108; R. Exh. 18 at 48; see also GC Exh. 45 (example corrective action form); Tr. 44–46, 605–607.)

"In cases of serious misconduct, immediate separation from employment may be warranted. Examples of serious misconduct include, but are not limited to:

> Violation of safety and/or security rules;
>
> Theft or misuse of company property or assets;
>
> Falsification or misrepresentation of any company document;
>
> Violation of Starbucks drug and alcohol policy;
>
> Possession of or use of firearms or other weapons on company property;
>
> Harassment or abusive behavior toward partners, customers or vendors;

> Violence or threatened violence;
>
> Insubordination (refusal or repeated failure to follow directions); and
>
> Violation of any other company policy.

(R. Exh. 17 at 108; R. Exh. 18 at 48)

When deciding about corrective action, store managers may consult with their district manager for guidance and may also consult with the Partner Relations Support Center (PRSC or Partner Relations), which is Respondent's primary human resources department. The PRSC is frequently involved in situations where an employee will be separated from employment. (R. Exh. 17 at 13–14, 108; Tr. 46–48, 178–179, 607, 642, 667, 673.)

4. Hannah Whitbeck

In April 2019, Hannah Whitbeck began working for Respondent as a barista in the Main and Liberty store in Ann Arbor. After a few weeks, Whitbeck was promoted to a shift supervisor position, where she remained until her discharge on April 11, 2022. As shift supervisor, Whitbeck was assigned the responsibility of counting and distributing tips each week, and generally was the sole person who handled that duty from May 23, 2020, to March 20, 2022 (another shift supervisor would count and distribute tips if Whitbeck was on vacation).[7] Apart from her discharge, Whitbeck never received any discipline during her employment with Respondent. (Tr. 14, 31–32, 286, 296–298, 345, 428–429, 489, 545.)

B. The Union Organizing Campaign

1. January 2022—union organizing begins

In the latter half of January 2022, Whitbeck and a coworker spoke with a union organizer from another store. After that conversation, Whitbeck began talking with her coworkers about forming a union at the Main and Liberty Store and provided a link to a union card to those employees who expressed interest in unionizing. (Tr. 368–371, 374, 542–543.)

2. February 4, 2022: employees send letter to Starbucks President and CEO Kevin Johnson and begin wearing union buttons

On about February 4, 2022, Whitbeck, acting with a group of employees at the Main and Liberty store, emailed a letter to Respondent's President and CEO Kevin Johnson. The employees stated as follows in the letter, in pertinent part:

> We are writing and signing this letter today to inform you of our intentions to form a union. We stand in solidarity with our fellow partners across the country who have done the same, and now it is our turn to take a stand. . . .
>
> It is in this spirit that we, the union organizing committee at Main & Liberty respectfully and formally demand that Starbucks recognize our union, Workers United, as the sole and exclusive collective bargaining agent for all permanent hourly full-time and part-time employees, **including** Baristas and Shift Supervisors, and **excluding** Store Managers, Assistant Store Managers and supervisors as defined by the NLRA. We are prepared to provide proof of our majority status to a mutually agreed upon third party immediately.
>
> Please respond to our demand for recognition by Monday, February 7th, at 3pm Eastern time.
>
> In Solidarity,
>
> The Starbucks Workers United Organizing Committee at
> Ann Arbor Main and Liberty, Store # 08793
> Ann Arbor, MI
>
> **Signatories:**
>
> Hannah Whitbeck
> [Seven additional employees by name.]
> And other anonymous partners

(GC Exh. 6 (emphasis in original); Tr. 326–327, 368, 372–373, 494–495; see also Tr. 373, 494 (stating that Whitbeck did not receive a reply to the February 4 letter), 371, 374; GC Exh. 2 (noting that a total of approximately 18–21 baristas and shift supervisors worked in the Main and Liberty store at this time).) In conjunction with the letter, the Union posted on its Twitter account that employees at the Main and Liberty store intended to unionize. Whitbeck also participated in an interview with a local radio station about the organizing campaign. (Tr. 385–386, 388.)

Also on February 4, Whitbeck and several other coworkers began wearing buttons with the Workers United logo during their work shifts. When customers asked about the union buttons, Whitbeck was one of two employees who took the lead with answering customers' questions about the union organizing campaign. (Tr. 339, 377–378, 382–383, 492–493, 542–543; GC Exh. 7.)

By about February 5, managers were aware that employees at the Main and Liberty store (and certain other stores in Ann Arbor) were seeking to unionize. Lind and Schmehl, for example, were aware that Whitbeck and several other employees were wearing union buttons to work. (Tr. 50–52, 113; see also Tr. 618, 620–621, 703 (noting that Schmehl visited the Main and Liberty store on February 7–8, 2022, and saw employees wearing union buttons).) There is no evidence, however, that managers knew in this timeframe that Whitbeck had been: speaking to coworkers about unionizing; acting (unofficially) as a lead organizer at the Main and Liberty store; answering questions from customers about the union organizing campaign; or providing interviews to the media. (See Tr. 114, 625–626, 738; see also Tr. 487–488, 542 (noting that while Whitbeck and her coworkers viewed Whitbeck as a lead organizer, that was a voluntary role that she took on without the Union's involvement).)

3. February 8, 2022—election petition filed

On February 8, the Union filed a petition for an election at the Main and Liberty store. Around the same time frame, the Union also filed election petitions at 4 additional stores in Ann Arbor (all 5 stores were in Schmehl's district, #366). Lind and Schmehl

[7] Respondent's tip counting/distribution policies and practices are discussed in more detail in Findings of Fact (FOF), Sec. II(K)(1), infra. I also note that while the parties stipulated that Whitbeck handled tips from May 23, 2020, to March 21, 2022, I have used March 20, 2022, as the end date because the March 21, 2022 date is in dispute as the day that Respondent did not assign Whitbeck to handle tips. (Tr. 14.)

were aware of the election petition filing at the Main and Liberty store, and Lind posted a notice at the Main and Liberty store about the petition. (GC Exh. 2; Tr. 249–251, 378–379, 614–617; see also Tr. 620–622 (noting that Schmehl saw employees wearing union buttons at least 4 of the 5 stores in February and/or March 2022).)[8]

4. February 11, 2022—Instagram posting and photograph

On February 11, Whitbeck appeared in a photograph that a union organizer posted to an Instagram account that the Union created for Starbucks employees in District 366. Whitbeck was one of three employees in the photograph, appearing on the far left of the photograph and behind a posterboard sign that stated, "Ann Arbor stands with Memphis - #tobeapartner." The Instagram post accompanying the photograph stated as follows:

> We, the Ann Arbor/Ypsi stores, stand in solidarity with Partners in Memphis who are experiencing the ramifications of union busting efforts from Starbucks Corporate. We need protections from unjust firing, and this is exactly why we need unions! #InSolidarity #UnionStrong

(GC Exh. 8; Tr. 379–382 (noting that Whitbeck made the posterboard sign).) There is no evidence that Starbucks managers saw the Instagram posting and photograph.

5. February 22, 2022—Lind posts two flyers in response to the organizing campaign

Once the union organizing campaign was underway, Respondent took the position that it did not need a third party (such as a union) to deal with employees. Consistent with that position, on about February 22, Lind (at Schmehl's direction) posted two flyers from Respondent on the store communication bulletin board in the back of the Main and Liberty store. One of the flyers, titled "A Message from Bridgette and Paige: All District 366 Partners Should Have the Right to Vote," stated as follows, in pertinent part:

> Hi partners,
>
> Hope you are doing well. We know things are busy but wanted to check in as a district given the Workers United petition we received at five of our Ann Arbor stores. We wanted to let you know that today we're asking the National Labor Relations Board (NLRB) to expand the vote to all baristas and shift supervisors in our district 366 stores.
>
> Here's why: Our district stores are interconnected – we borrow partners to fill shifts, we transfer and promote between stores, we share inventory, and we work together every day to bring the Starbucks experience to life in this market. We know many of you value this flexibility and our ability to support one another across stores and districts. When a union comes between us, that can all change. . . .
>
> It is our sincere hope that as this process unfolds, you will see why the direct relationship we have as partners matters, and why we don't need the Workers United union between us. We're not perfect, but we want to keep working together to create the partner experience you deserve, and one you can feel proud of. That is our top priority. . . .
>
> Your partners,
> Bridgette and Paige

(GC Exh. 10; Tr. 54–57 (noting that "Bridgette" was Respondent's Regional Director Bridgette Jackson, while "Paige" was District Manager Paige Schmehl), 225, 246–248, 390–391, 495, 624, 626, 675–676; see also Tr. 391, 708 (noting that only the store manager or district manager have the authority to post notices from Respondent on the store communication bulletin board in the back of the store).)

The other flyer that Lind posted included a copy of a Workers United union card along with the following text, in pertinent part:

> Union organizers are visiting stores to get partners to sign up, with some stores filing in as little as a few days. This card carries legal weight. Signing it indicates you want to join and be represented by a union. If just 30% of partners in a store sign union cards, the union can petition for an election. . . .
>
> Please get all the facts! Do not sign a union card unless you know for sure you want to join a union.

(GC Exh. 25 (emphasis in original); Tr. 225, 246–247, 676.)

C. February 2022—Lind and Whitbeck Discuss Scheduling

1. Week of February 21—discussion about Whitbeck's hours

Early in the week of February 21, Lind posted the schedule in the back of the store for the week of February 28. In preparing that schedule, Lind only assigned Whitbeck 24 hours of work. Lind also failed to assign any noncoverage time on the schedule (though that omission would not have been visible to employees on the posted version of the schedule). After seeing the schedule, Whitbeck advised Lind that she (Whitbeck) needed to work at least 30 hours per week. Lind stated that she did a bad job with the February 28 schedule and would do her best to get Whitbeck the hours that she needed. (Tr. 110–112, 114–115; GC Exh. 46(m); R. Exh. 1 at 918–919; see also Tr. 112 (noting that Whitbeck counted tips on February 28 even though the schedule did not assign her noncoverage time for that purpose); compare Tr. 109–110 (discussing R. Exh. 1 at 916, which shows that Respondent scheduled Whitbeck for noncoverage time from 2:30 p.m. to 4 p.m. on February 21, which is the customary time for counting and distributing tips).)

2. February 25—Whitbeck requests time off for March 2–4 and meets Schmehl

On about February 25, Whitbeck approached Lind and advised that she (Whitbeck) had a court hearing coming up and needed to have some of her early-March shifts covered. Lind and Whitbeck reviewed the schedule together and identified coworkers who might be able to cover the shifts. Whitbeck

[8] The 5 Ann Arbor stores for which election petitions were filed in this timeframe were: store 08793 (Main and Liberty); store 02482 (South University); store 23217 (Zeeb Road); store 02359 (State and Liberty); and store 11966 (Washtenaw Ave.). An election petition was filed at one additional store in April 2022: store 13531 (Carpenter Road). (GC Exh. 3 at 2; Tr. 614–616.)

subsequently obtained coverage for the shifts in question.[9] (Tr. 159–161, 253, 393–394, 396; see also Tr 391–392 and GC Exh. 3 at 1–3 (noting that the court hearing was a Board hearing regarding, among other things, the election petitions for the Main and Liberty store and other stores in Starbucks district 366).)

That same day, Schmehl met with Lind at the Main and Liberty store for a spring planning visit. While Schmehl was in the store she introduced herself to Whitbeck and asked about Whitbeck's background, college interests, and experience working for Respondent. (Tr. 622–623, 703–705.)

D. February 27, 2022—Whitbeck and Employee B.G.[10] *Disagreement about Coverage Book*

On February 27, Whitbeck came in to the Main and Liberty store to work her scheduled shift from 10:30 a.m. to 7 p.m. Shortly after starting her shift, Whitbeck sent a message to Lind (using the "Crew" app on her phone) to express concerns about another shift supervisor, employee B.G. Whitbeck stated as follows in her message:

> Hey whenever youre in next i would like to try and talk about a concern I have with a shift [supervisor]. Ive gotten multiple complaints from baristas about them and theyve made some very concerning comments the last few times working together.

(GC Exh. 11 (showing that Whitbeck sent her message sent at 10:45 a.m. on February 27 and that Lind did not respond until the morning of February 28); Tr. 74–76, 397–398, 483, 488, 498, 502; see also GC Exh. 46(l).)

During her shift, Whitbeck wrote the following comment in the daily records book: "Did nothing, like always [handwritten smiley face]." Whitbeck wrote that remark because she believed, in part because of remarks she thought B.G. had made behind her back, "there is a general consensus that I don't do anything during my time at work." (R. Exh. 5; GC Exh. 13(a); Tr. 198–199.)

Upon arriving at the store to work the 3:30 to 10:30 p.m. shift, B.G. saw Whitbeck's note in the daily records book. The following exchange then occurred:

B.G.	Who wrote this?
Whitbeck:	I did
B.G.	Is it a joke?
Whitbeck:	No
B.G.	Well why did you write it?
Whitbeck:	Well I've been told by multiple people that I don't do anything here and it was slow
B.G.	Well who said that?
Whitbeck:	You and [another employee]
B.G.	(now yelling) No we didn't, who even told you that?
Whitbeck:	It doesn't matter who told me, I know they wouldn't lie to me and they came to me separately and said the same thing.
B.G.	Well does [L.R., another employee on duty at the time] know how much shit you talk about [L.R.]?
L.R.	First of all she wouldn't, second of all if she did I don't care. You're redirecting this on to us instead of what the actual issue is
B.G.	Well I'm going to have to call someone about this. You're extremely childish and I took a picture of your note.
Whitbeck:	Okay, I mean I was told you're reporting me anyways so its fine.
B.G.	Real professional Hannah, nice job.

(GC Exh. 13(a); see also GC Exh. 46(k); see also Tr. 63, 77, 171, 182, 399–402, 498–499; R. Exh. 4 at 5.)[11]

E. February 27, 2022—Violation of Rule Requiring Two Employees to be Present in Store

1. The two-employee rule

As part of its safety and security rules, Respondent requires at least two employees to be in its stores at all times. (R. Exh. 18 at 16; Tr. 263, 287, 374, 612–613; see also R. Exh. 16 at 14–15 (noting that stores generally must open and close with a minimum of two employees present).)[12] When only two employees are working and one of those employees needs to take a meal break, Respondent's policies specify as follows:

> Starbucks Safety and Security Guidelines require the presence of at least two partners in the store at all times. If a partner is scheduled for a meal break and only one other partner is on shift, the partner should go to the back of the store for the duration of the meal break. Because the partner is not free to leave

[9] Whitbeck testified that during this discussion with Lind, she (Whitbeck) took out her phone and held it in front of Lind for a minute or two to show her an electronic copy of Whitbeck's subpoena to attend a Board hearing about the upcoming elections (specifically about whether the vote should proceed on a store-by-store basis or instead as a district-wide vote). (Tr. 394–395, 495–498.) The General Counsel did not establish by a preponderance of the evidence that Lind reviewed the phone display in sufficient detail to understand that Whitbeck was showing her a subpoena for a Board hearing. Indeed, Lind denied knowing (in this time period) that Whitbeck was going to attend the Board hearing, and it is plausible that Lind did not scrutinize the phone display in detail (e.g., because she wished to respect Whitbeck's privacy, because the display was too small, and/or because Lind was focused on figuring out how to cover the schedule). (Tr. 159–161 (noting that Lind thought Whitbeck had a court hearing for a personal matter), 252–253.)

[10] As per my usual practice, I use initials when referring to non-supervisory employees who did not testify during the trial.

[11] There is no evidence that customers were present in the store during the argument between Whitbeck, B.G., and L.R. (See, e.g., Tr. 171, 399–400 (noting that the 3 employees were present during the argument and not mentioning any other individuals).)

[12] The Main and Liberty store is a "high incident" store, meaning that incidents related to employees and/or customers (including a customer being abusive or violent) arise 2–3 times a week on average. (Tr. 176, 263, 354–355, 491.)

> the store, the meal break will be paid. The partner should not punch out or in for the meal break, but instead should record the times of the meal break in the Punch Communication Log. Please consult the store manager for directions.

(R. Exh. 18 at 16; see also R. Exh. 17 at 79–80 (stating the same rule for meal breaks when only two employees are working).)

2. The February 27 schedule

For the February 27 schedule, which Gibbons drafted and Lind approved/posted, Respondent scheduled B.G. to take a 30–minute meal break from 6:45 to 7:15 p.m. The schedule accordingly risked creating an issue with the two-employee rule insofar as the time for B.G.'s meal break overlapped with the end of Whitbeck's shift at 7 p.m. and only one other employee (barista Luc Meloche) would be on duty. (R. Exh. 1 at 915–916; Tr. 108–109, 172–174, 226, 328, 491; see also GC Exh. 46(k)–(l).)[13]

3. Violation of the two-employee rule

Following their dispute from earlier in the day, Whitbeck and B.G. did not speak to each other again until around 6 p.m., when Whitbeck handed off her play calling duties to B.G. Between 6 and 6:30 p.m., Whitbeck suggested that B.G. take a meal break because Whitbeck's shift was ending at 7 p.m. and she could not stay later than that time. B.G. said "no" to the request that he take his lunch in the timeframe that Whitbeck suggested. (Tr. 62–65, 171–172, 174, 226, 402–404, 499–500; see also Tr. 406–407 (noting that since both Whitbeck and B.G. were shift supervisors, Whitbeck did not have the authority to direct B.G. to take a meal break at a specific time).)

At around 6:50 p.m., B.G. began putting his coat on and prepared to clock out for a meal break. Whitbeck reminded B.G. that she had to leave at 7 p.m. and asked B.G. to be back in the store by then. B.G. did not respond and left the store, clocking out at 6:54 p.m. Whitbeck then, at 6:55 p.m., sent the following message to Lind via the Crew app as a followup to her earlier message raising concerns about B.G.:

> Just a heads up they confronted me about it and yelled at me [thumbs up sign] guess ill let whoever know next time

(GC Exh. 11; Tr. 63–64, 329–330, 339, 404–405, 501, 503, 505, 735; see also 76, 407 (noting that Lind did not respond to Whitbeck's message until February 28); GC Exh. 13(a).)[14]

B.G. did not return to the store by 7 p.m. Whitbeck waited a couple of minutes past the hour, and then clocked out at 7:04 p.m. and left the store, leaving Meloche as the only employee present in the store. Before leaving, Whitbeck made sure that all store supplies were stocked and then told Meloche to contact her if any problems arose. (Tr. 329–330, 339, 343, 405–406, 509; GC Exh. 13(a); see also Tr. 341 (noting that 1 individual entered the store on February 27 while Meloche was present as the only employee).)

At 7:28 p.m., Whitbeck texted Meloche. The following text message exchange occurred:

Whitbeck:	Hey! Quick favor, when [B.G.] does come back can you text me when? Thank you :)
Meloche:	[B.G.] came back around 7:23–7:25 while I was talking to the guy in the Cubs hat that usually gets a sample coffee. [B.G.] shoved a chair behind him to get by so we [Meloche and the individual in the Cubs hat] stopped talking after that.
Whitbeck:	I see, well if anything happens just give me a holler. Thanks for listening to me rant earlier, sorry everything is messy at the moment :(

(GC Exh. 12; Tr. 331–333, 510–511.)

During trial, Whitbeck explained that she could not work past 7 p.m. on February 27 because she needed to visit her grandfather who had a heart attack earlier in the day. Whitbeck did not provide that explanation to Respondent before she was discharged, though she did mention in her February 28 report about the incident that she could not stay past 7 p.m. because she had "something serious" that she needed to get to after work. Respondent, meanwhile, did not ask Whitbeck during its pre-discharge investigation why she could not work past 7 p.m. (Tr. 508–509 (noting that Whitbeck did not mention her grandfather's medical condition at the time because she viewed it as personal information), 731–732; GC Exh. 13(a).)

F. Whitbeck Submits an Incident Report about February 27 and Respondent Opens an Investigation

1. February 28 – Whitbeck's incident report

On February 28, Whitbeck submitted an incident report about the events of February 27. Whitbeck stated as follows in the report concerning the end of her shift:

> The rest of the night was tense [after the dispute with B.G. about what Whitbeck wrote in the daily records book] but nothing else major happened. Only area of concern is I asked [B.G.] to take [] lunch at 6:30 as I was off at 7, [B.G.] refused and took [] lunch at 6:54 and left the store. I was unable to stay so that left the barista alone in the store for almost 30 minutes. I would have stayed if I could but there was something serious I needed to get to after work. I reached out to my [store manager] again letting her know there was a confrontation and again no

[13] Although the posted schedule did not show meal breaks, employees could see that information on the daily coverage report. (Tr. 222, 536, 538.)

[14] I have credited Whitbeck's testimony and the February 28 incident report that she submitted to Respondent about what happened between her and B.G. regarding B.G.'s meal break on February 27. B.G. did not testify as a witness during trial, and Lind testified that she found that Whitbeck did tell B.G. to take a meal break at 6:30 p.m. on February 27. (See Tr. 77–78; FOF, Sec. II(F)(1), infra (discussing Whitbeck's incident report); see also FOF, Sec. II(I)(3), infra (Meloche's written statement, stating that Whitbeck told him she asked B.G. to take lunch early, and indicating, based on B.G.'s comments to Meloche, that B.G. knew B.G. "left late" for the meal break).) Further, B.G.'s written statement does not dispute most of what Whitbeck said in her testimony and incident report. At most, B.G. raised a question about whether Whitbeck "said goodbye to [B.G.] indicating that [B.G.] was going to be leaving [Meloche] alone" but I do not credit B.G.'s statement on that point because B.G. was reluctant to provide the statement to Respondent and because Respondent did not follow up with B.G. for clarification. (FOF, Sec. II(F)(3), I(1), infra.)

> response. [I'm] not sure if there is really any recourse since we don't really have an avenue of communication and id prefer for the situation not to escalate.

(GC Exh. 13(a)–(b) (also describing the confrontation with B.G. about Whitbeck's entry in the daily records book); Tr. 412.)

2. February 28—Lind interviews Whitbeck

Later on February 28, Lind and Schmehl received Whitbeck's incident report. Lind then met with Whitbeck for 5–10 minutes to discuss the February 27 incidents and the Crew app messages that Whitbeck sent. Whitbeck's verbal account of the incidents generally tracked the incident report that she submitted. During the discussion, Lind asked why Whitbeck did not call her when the issues arose with B.G. about the daily records book. Whitbeck replied that she just wanted to get through the rest of her shift. Lind also asked why Whitbeck did not call or text her when B.G. did not take a meal break by 6:30. When Whitbeck replied that she only had 10 minutes notice between B.G. leaving the store and the end of her shift and did not think anything could be done in that timeframe, Lind asserted that Whitbeck knew there might be a problem as early as 6:30 and asked why Whitbeck did not call/text her or contact a nearby store to see if an extra employee could be sent to the Main and Liberty store.[15] Whitbeck replied that she did not know why she did not take those steps. (Tr. 62–63, 66, 166–168, 171–172, 174–175, 260–261, 413–416, 512, 626–627; see also Tr. 175 (Lind testimony that had Whitbeck called her, Lind could have contacted a nearby store for assistance, asked B.G. to stay in the building for a paid meal break, or have Whitbeck and Meloche leave the store and lock the doors), 506 (Whitbeck testimony admitting that she should have contacted Lind about Meloche potentially being left alone in the store).)

Lind next contacted Schmehl to advise her about the conversation with Whitbeck. Schmehl told Lind to get a statement from B.G. and also consult with the PRSC. (Tr. 178, 627, 720–721.)

3. March 1—Lind interviews B.G.

On about March 1, Lind spoke with B.G. about the February 27 incidents. B.G.'s description of the dispute with Whitbeck about what Whitbeck wrote in the daily records book was generally the same as Whitbeck's. When Lind asked B.G. about leaving for the meal break, B.G. told Lind that Whitbeck did not tell him that she needed to leave (at 7 pm) or that it would be a policy violation to have only one employee in the store. (Tr. 181–182, 259, 267, 270; see also Tr. 263, 282–283 (Lind testimony noting that B.G.'s training with Respondent would have included training about the two-employee rule, and that B.G. should have known that one employee could not be left alone in the store).)

A few days later, Lind asked B.G. to provide a written statement about the February 27 incidents. B.G., however, was very hesitant to provide a written statement, requiring Lind to ask him for one on three separate occasions. (Tr. 179–180, 266–267.)

4. March 1—Lind contacts the PRSC

Also on March 1, Lind contacted the PRSC for a consultation. PRSC representative Lois Peck advised Lind that they (the PRSC) would be speaking with the next level manager (Schmehl) and other individuals to discuss the February 27 incident and would be in touch with Lind if they needed additional information. Ultimately, the PRSC did not directly contact Lind again about the February 27 incident. (Tr. 178–179, 230, 264–266, 475; see also Tr. 201 (noting that Lind's role in the investigation after this timeframe was limited to obtaining statements and sending them to Schmehl).)

G. March 2–4, 2022—Board Proceedings Regarding Election Petitions

On March 2–4, a hearing officer held a videoconference representation hearing for multiple cases, including Case 07–RC–290295, the representation case for the Main and Liberty store. Whitbeck, having been subpoenaed by the Union as a potential witness, attended the videoconference hearing and had her picture and name visible during the hearing. About 15–20 other individuals were present for the videoconference hearing, including Schmehl, who logged on to the hearing for about 10–15 minutes on the final hearing date and noticed that District 366 employees Whitbeck and Bennett Proegler (from the Zeeb Road store) were also present for the hearing. Two Starbucks employees from other stores testified during the hearing. Whitbeck and Proegler did not testify. (Tr. 391–392, 396–397, 495–496, 538–539, 631–633, 688; see also GC Exh. 3 at 1–3.)

H. Early March 2022—Whitbeck Continues to Engage in Union Activities

1. Community board policy

In some stores, Respondent has a "community board" located the café area of the store. The community board is essentially a black chalkboard where Respondent permits 3 categories of content to be displayed:

> Starbucks content, such as Starbucks enterprise community programs and initiatives (i.e., non-profit organizations and community events sponsored by Starbucks);
>
> Store-specific content, such as photos or materials about community programs, service projects, or other community events that the store has been involved in; and
>
> Neighborhood content that customers may post, such as information about non-profit neighborhood community programs, requests for volunteers, or announcements about community events (e.g., art fairs or book clubs)

(R. Exh. 16 at 27–28.) Respondent does not permit the following types of content to be posted on the community board: for rent or for sale notices; advertisements; business cards; personal ads; notices or announcements that are political or religious in nature; notices that disparage Starbucks; any material that could be deemed offensive, insulting, or derogatory; or regulatory signage such as hand-washing notices or "no smoking" signs. (Id. at 28.)

[15] The State and Liberty store is closest to the Main and Liberty store, and is about a 10–15 minute walk. The South University store is the next closest store to the Main and Liberty store and is about a 15–25-minute walk. (Tr. 93, 364, 410–411, 487; see also Tr. 365–367 (explaining that it can be difficult to find parking near the Main and Liberty store, and that parking spaces near the store have meters).)

2. Union activities in this time period

In about early March, Whitbeck placed union stickers in the Main and Liberty store that bore an image similar to the Starbucks logo but with the "siren" frowning and holding a fist above her head. Specifically, Whitbeck posted a sticker on the community board and also placed a sticker on an A-frame chalkboard near the community board. The sticker on the community board was removed after 1–2 weeks, but the sticker on the A-frame was not removed. (Tr. 443–446; GC Exh. 21; compare R. Exh. 18 at 491 (showing the actual Starbucks logo in top left corner).)

On about March 9, Whitbeck wrote "Brewing Solidarity" on the community board in the Main and Liberty store and provided sticky notes and paper/tape for employees and customers to post messages on the community board in support of the union organizing campaign. Whitbeck subsequently took a photograph showing around 10 notes bearing messages such as "#union strong" and "we support your effort to unionize!," and the Union posted the photograph to its Instagram page. By March 11, however, the "Brewing Solidarity" heading and accompanying notes were removed from the community board. (Tr. 417–423, 514–516; GC Exhs. 14–15.)

The evidentiary record is not clear on who removed the union sticker or the "Brewing Solidarity" messages from the community board.

I. Mid–March 2022—Respondent Continues to Investigate the February 27 Incidents

1. B.G. provides a written statement

On about March 9 or 10, B.G. texted Lind a written statement about the February 27 incidents. On March 11, Lind sent B.G.'s statement to Schmehl along with Whitbeck's original incident report, and Schmehl sent those materials to the PRSC. B.G.'s written statement reads as follows:

> Erin [Lind] talked to me March 1st 2022 about an incident that occurred on Sunday February 27th 2022. This incident occurred because a shift supervisor, Hannah Whitbeck, wrote an inappropriate comment in our daily recording book. This book is open to everyone to see, and she clearly wanted to make an unprofessional comment for the entire staff to see. This comment was seen by several others before I had a chance to address the situation. This created more turmoil in the store because she [chose] not to address me [personally] or a manager for help. I used the word s*** one time during our conversation. From my conversation with Erin, it was clear that Hannah lied about more than one thing during her talk with Erin. For example, Hannah told Erin she said goodbye to me indicating that I was going to be leaving Luc [Meloche] alone . . . yet she left him here knowing what the company policy is regarding leaving partners alone when I wasn't aware. I was in my car minutes away, and a simple phone call would have brought me back to the store immediately. I take full responsibility for my actions that stemmed from Hannah's inappropriate comments written in the daily record book, and I would like to point out that there are many more in the book written by individuals that aren't up to Starbucks standards.

(R. Exh. 4 at 5; see also R. Exh. 4 at 1–4; Tr. 179–181, 183–185, 201, 267–270, 635–636, 695–696, 724–725.) After receiving B.G.'s written statement, neither Schmehl nor Lind followed up with B.G. to ask whether B.G. admitted or denied being asked by Whitbeck to take a meal break early on February 27 (to avoid a conflict with the end of Whitbeck's shift). (Tr. 695–699.)

2. Schmehl consults with the PRSC about the investigation

Beginning on about March 16, Schmehl communicated with PRSC representatives about the next steps to take in the investigation. In connection with those communications, Schmehl provided the PRSC with Whitbeck's incident report and B.G.'s written statement and asked Lind to provide a copy of the messages that Whitbeck sent to Lind on February 27 using the Crew app. Lind provided the messages and added the following statement:

> On the 27th Hannah sent me the following messages on a 3rd party messaging app. I did not reply at the time because I do not receive alerts for this app. Hannah did not call me or send me a direct text message. I asked Hannah on the 28th why she did not call me when the incident [with B.G. about the daily record book entry] occurred, and Hannah told me she was too flustered and just wanted to get the shift over with. Later in the conversation when we discussed Hannah leaving a partner in the building alone , I asked again why she did not call me so I could have sent over a partner from another location, and she said she did not think about it.

(R. Exh. 6 (attaching GC Exh. 11 (Whitbeck's Crew app messages to Lind on February 27); Tr. 202–205, 636–640, 681, 725–728; see also R. Exh. 19; Tr. 726–727 (noting that the PRSC contacted Schmehl on March 16 to follow up on Lind's March 1 communication to the PRSC), 484–485 (explaining that it is possible to turn notifications on or off for Crew app messages).) The PRSC also recommended that Schmehl obtain a statement from Luc Meloche about the February 27 incidents, and that the legal department be consulted about what discipline to issue to Whitbeck and B.G. (Tr. 638–643, 728; R. Exh. 20 at 1.)

3. Meloche provides a statement; Schmehl recommends that both Whitbeck and B.G. be discharged

At Schmehl's direction, Lind spoke to Meloche on March 20 to ask him about the February 27 incidents. Meloche verbally advised that he only heard from Whitbeck that she asked B.G. to leave early for lunch but did not have more to add because he did not hear any discussion between Whitbeck and B.G. (R. Exh. 20 at 3; GC Exh. 17; Tr. 79, 81–82, 201, 205–206, 210, 271, 334–335, 640, 642, 728.) At Lind's request, Meloche also provided (via text message on March 21) the following written statement:

> From what I heard from Hannah, [B.G.] and her talked about [B.G.] leaving for his lunch earlier and he didn't want to, so he ended up leaving later and I was left alone at the store. I did not see them talk, I only heard what Hannah and [B.G.] told me. [B.G.] said that Hannah wasn't letting him do stuff he wanted to, and that's why he left late, but Hannah told me that he did what he needed to do so there wasn't any reason for him to leave late.

(GC Exh. 17; see also Tr. 82, 206, 335, 728–729.) Lind provided Meloche's statements to Schmehl, who then passed them along to the PRSC. Schmehl also consulted with Respondent's legal department and ultimately recommended (on about March 21)

that both Whitbeck and B.G. be discharged. (Tr. 643–645, 714, 729; R. Exh. 20 at 3.)

J. March 20, 2022—"Sip In" at Zeeb Road and State/Liberty Starbucks Locations

In connection with the organizing campaign, the Union scheduled a "sip in" event at two Starbucks stores in Ann Arbor—the Zeeb Road store and the State and Liberty store. Using posters displayed around Ann Arbor, and postings on Twitter and Instagram, the Union encouraged customers to visit one of the two designated stores between Noon and 3 p.m. on March 20 and show their support for worker's rights by ordering a "Union strong" coffee, wearing union attire, and leaving notes on the community board. (GC Exhs. 16 (March 15 Twitter postings), 42; Tr. 127–130, 141–142, 148, 424–426; see also Tr. 80, 148–149 (noting that both the Zeeb Road and State/Liberty stores are in Respondent's District 366).)

Starbucks shift supervisor Bennett Proegler was working at the Zeeb Road store when the March 20 sip in began at that location. A union supporter set up on the exterior patio with union buttons, union literature, and sticky notes that they were providing for people to write messages to post on the community board. Proegler observed individuals (including several customers) speak to the union supporter and then post a sticky note on the board as suggested. Schmehl, who was present with a manager from another store because of the sip in, sat in the store café for about 3 hours and on at least three occasions removed all sticky notes from the community board. The sip in ended at 3 p.m., and when Proegler finished his shift at 3:30 p.m. there were no sticky notes on the community board, but a notice about an unrelated art show remained on the board. (Tr. 127, 130–136, 138–139, 142–147, 156, 706–708; GC Exh. 43 (photograph that Proegler took during the sip in showing the Zeeb Road community board with various sticky notes attached);[16] see also Tr. 79–80 (noting that Lind knew about the sip in the day before it occurred), 133–134, 138–139, 156 (explaining that Schmehl's presence at the store for 3 hours was unusual since the regular store manager was out of town and since Schmehl did not greet any of the employees working that day),[17] 426 (noting that Whitbeck did not attend the sip in because she was on duty at the Main and Liberty store).)

K. March 21, 2022—Whitbeck not Assigned to Count and Distribute Tips

1. Respondent's policies and practices for counting and distributing tips

Customers may tip Respondent's employees in cash or when making purchases with the Starbucks mobile app. At the end of each week, a shift supervisor or barista who has been trained in the task will count and distribute tips to eligible employees based on the hours that they worked for the week. The tip counting/distribution task occurs on the clock and away from the sales floor (i.e., during non-coverage time), but does not come with any additional compensation. It generally takes around 90 minutes to count and distribute tips. The tip counting/distribution task is voluntary, and a Starbucks store may have multiple employees who are trained to, and in fact, count/distribute tips. (GC Exh. 5; R. Exhs. 17 at 100–101, 18 at 20–21; Tr. 41–44, 100–105, 118, 273, 427–428, 545.)

As previously noted, from May 23, 2020, to March 20, 2022, Whitbeck was the only employee to count and distribute tips at the Main and Liberty store, excluding times when she was on vacation. (FOF, Sec. II(A)(4), supra.) Whitbeck typically handled the previous week's tips on the following Monday during non-coverage time in the early/mid-afternoon. (Tr. 89, 110, 427, 516, 545; R. Exh. 1 (showing Whitbeck scheduled for non-coverage time on Mondays in January and February 2022).)

2. Tip counting during and after the week of March 21, 2022

On March 21 (a Monday), Whitbeck was scheduled to work from 3:30 to 9:30 pm. Lind, who created the schedule for the week with input from Robert Prince, did not designate Whitbeck for any non-coverage time to count and distribute tips during her shift, and did not schedule any other employee to count tips instead of Whitbeck. Upon noticing that issue, Whitbeck sent the following text message to Lind:

> Hey sorry to bother you so late but is there a reason [I'm] not being scheduled to do tips anymore? I know you [haven't] worked on the schedule for the past few times but this will be the third week in a row [I'm] not given time to do them.

(GC Exh. 18; Tr. 84–86, 118, 279–280, 427, 437–438, 443; R. Exh 1 at 925; see also Tr. 118, 273 (explaining that Lind knew, from Gibbons, that Whitbeck regularly counted tips), 484 (noting that at some point between February 27 and March 21, 2022, Lind asked Whitbeck to communicate with her via phone call or text since Lind did not check the Crew app often or receive notifications about Crew app messages).) Lind replied via text on March 22 that she was not sure but would look into the issue. (GC Exh. 18; Tr. 86, 116–117.)

By March 23, tips had still not been counted/distributed at the Main and Liberty store, prompting employee Scott Screws to text Lind to ask when tips would be done. Screws noted that employees needed the tip money and also mentioned his understanding that, per policy, tips should remain in the store only as long as necessary. When Lind replied that tips would be done on March 24, Screws noted that Whitbeck would not be working that day and that no other employees at the store were trained on how to count/distribute tips. Lind indicated that she had another partner who could handle tips. (GC Exh. 19; Tr. 88–89, 274, 545–547, 556, 558–559.)

Also on March 23, Whitbeck texted Lind to follow up on her question about handling tips. Upon receiving Lind's text that tips would be done on March 24, Whitbeck asked if there was a reason she (Whitbeck) was not assigned to do tips since she had been doing them for 2 years. Lind offered to chat with Whitbeck about the issue the next time they were in the store together, but

[16] It is not possible to read the sticky notes shown in GC Exh. 43. (See GC Exh. 43; Tr. 142.)

[17] Schmehl testified that she might spend 3 hours at a particular store if meeting with the store manager for a spring planning period visit. Schmehl also visits stores for 30 to 120 minutes to make sure they are set up appropriately during promotional launches, but usually does so when the store manager is present. (Tr. 704–706.)

that chat never occurred. (GC Exh. 18; Tr. 86–87, 278–279, 438–439.)

On March 24, employees continued to inquire about tips, including wondering if Lind planned to have an employee from another store (referred to as a "borrowed partner") handle tips. Lind responded that this was incorrect and trained a barista at the Main and Liberty store to handle tips that day. (Tr. 87, 117, 162–164, 166, 275–276, 485, 547, 557; R. Exh. 2 (daily records book entry showing question about whether a borrowed partner would handle tips); see also Tr. 117–118 (noting that the barista who handled tips on March 24 was one of the employees at the Main and Liberty store who regularly wore a union button), 100–101, 118, 273, 518–519 (noting that Lind had about 5 employees trained to do tips at the South University store where she normally worked).)

Whitbeck's hourly pay rate did not change as a result of not counting tips during the week of March 21. After March 21, Whitbeck (with Gonzalez's approval) resumed counting and distributing tips until she was terminated on April 11, 2022, notwithstanding the fact that Respondent did not schedule Whitbeck for non-coverage time that could be used for that purpose. (Tr. 457–458, 518–519, 530–531; R. Exh. 1 at 928, 930 (indicating that Whitbeck was only scheduled for 60 minutes of non-coverage time on a Thursday during the week of March 28 and was not scheduled any non-coverage time during the week of April 4).)[18]

L. March 23, 2022—the Union Files an Unfair Labor Practice Charge

On March 23, 2022, the Union filed an unfair labor practice charge in Case 07–CA–292971, alleging that Respondent unlawfully discriminated against Whitbeck by changing her job duties in retaliation for Whitbeck having engaged in union and protected concerted activities. The charge, however, lists an incorrect email address for the Main and Liberty store. (GC Exhs. 1(a), 1(h)(par. 1(a); Tr. 165.)

On March 28, 2022, the General Counsel mailed a copy of the unfair labor practice charge in Case 07–CA–292971 to Respondent at the Main and Liberty Store, along with a cover letter from the Regional Director for Region 7 that described procedures that would apply while the agency investigated the charge. (GC Exhs. 1(b), 1(h)(par. 1(a).) Three attorneys for Respondent filed notices of appearance in Case 07–CA–292971 on March 29–30, 2022, with the notices submitted to the Regional Director for Region 7. (GC Exhs. 48–51.)

On about April 4, 2022, Whitbeck was at the Main and Liberty store when Gonzalez, who was now in place as store manager and was preparing to leave for the day, announced that she was opening a letter from the National Labor Relations Board. Whitbeck observed that Gonzalez was smiling when she made the announcement but stopped smiling after opening the letter. Gonzalez then left for the day. About 2 days later, Whitbeck saw Gonzalez again at the store and explained that the letter related to incidents that occurred before Gonzalez began working at the store. Gonzalez replied that she could not speak about the contents of the letter since it was not addressed to her but indicated that she understood what Whitbeck was saying. (Tr. 452–455, 519–521.)

M. April 7, 2022—Whitbeck Interviewed for Newspaper Article

On April 7, 2022, Whitbeck was quoted in a news article about union organizing at Starbucks locations in Ann Arbor. Referring to a resolution by the Washtenaw County board of commissioners that supported the organizing effort, Whitbeck stated "We were all just thrilled. . . . A lot of people don't know about it, so the fact that people from the top of Washtenaw County are supporting us and are vocalizing their support is really, really awesome." The article also indicated that Whitbeck mentioned that 5 stores in the area were seeking to form unions and that working conditions during the Covid–19 pandemic had been "unacceptable" and were part of what was driving the effort to unionize. (GC Exh. 26(a)–(b); see also Tr. 448–450.) There is no evidence that Respondent's managers saw the news article before Whitbeck was discharged.

N. April 11, 2022—Respondent Discharges Whitbeck

1. April 3—discharge paperwork is approved

On April 3, 2022, Respondent approved Schmehl's recommendation to discharge Whitbeck and also approved the "notice of separation" form needed for the discharge. Since Gonzalez was still relatively new as store manager at the Main and Liberty location, Schmehl asked Lind to support Gonzalez in notifying Whitbeck of her discharge. Starting on April 5, Lind and Gonzalez exchanged text messages about when to meet with Whitbeck, but due to scheduling issues were not able to conduct the discharge meeting until April 11, 2022. (R. Exhs. 7–8; Tr. 65–66, 210–216, 645, 647–648, 714–715.)

2. April 11—Lind and Gonzalez notify Whitbeck that she is being discharged

During Whitbeck's shift on April 11, Lind and Gonzalez notified Whitbeck that she was being discharged for leaving a barista alone in the store on February 27 and thereby violating Respondent's safety and security rules. Lind and Gonzalez gave Whitbeck a "notice of separation" form that stated as follows:

> This document shall serve as Notice of Separation for [shift supervisor] Hannah who failed to communicate in line with Starbucks mission and values and failed to meet expectations in [shift supervisor] role including acting in violation of Starbucks safety and security standard when:
>
> On 2/27/22 Hannah left the store at the end of her shift, knowing she was leaving a barista in store by themselves for 30 minutes. Hannah did not notify [a store manager, district manager], or other Shift Supervisor for support for coverage.
>
> Per Store Operations Manual pg 17 – stores must open with minimum of 2 partners
>
> Per [shift supervisor] job description: Follow Starbucks operational policies and procedures, including those for cash

[18] Respondent scheduled Whitbeck for 120 minutes of non-coverage time on April 11, the day that Respondent discharged Whitbeck. (R. Exh. 1 at 932.) It is not clear whether Whitbeck handled tips on April 11 before Respondent discharged her.

> handling and safety and security, to ensure the safety of all partners during each shift

(GC Exh. 22; Tr. 32, 60–61, 67–68, 212, 215–217, 455–456, 473, 648–651; see also FOF, Sec. II(E)(1), supra (describing Respondent's rule that at least two employees must be in the store at all times).) Whitbeck did not have any prior discipline on her record during her employment with Respondent. The union organizing campaign was still in progress when Respondent discharged Whitbeck. (Tr. 68, 456, 652, 732–733; GC Exh. 3 at 37 (scheduling a mail ballot election for the Main and Liberty store to proceed from May 16 through June 6, 2022).)

3. Comparator evidence—discipline for violating two employee rule

In a job aid about discipline for violations of Respondent's safety and security policy, Respondent indicates that an employee who enters the store alone should receive a final written warning.[19] The job aid also indicates that "[t]hreatening a peer or customer with physical violence" is an example of misconduct so severe that discharge is appropriate regardless of the disciplinary history in the employee's file. (GC Exh. 41 (noting that the job aid "is intended to complement, not replace, guidance provided by the next-level-leader, Partner Resources, Ethics & Compliance, or legal counsel"); Tr. 90–91.)

In winter 2021 (i.e., around January/February/March), Gibbons received complaints that a shift supervisor (A.H.) at the Main and Liberty store had, on at least two occasions, left a coworker alone in the store, and on a different occasion pushed a coworker. After investigating the complaints and consulting with the PRSC and the district manager at the time, Gibbons issued A.H. a final written warning for violating the two-employee rule and for putting hands on a coworker. (Tr. 287–290, 293, 303, 305, 307, 311, 315–321; see also Tr. 305 (explaining that Gibbons believed A.H. left one person alone in the store, and not two employees together but without A.H. present as shift supervisor as suggested in questions posed during cross examination).)

There is no evidence that Respondent discharged any other employee in Michigan (besides Whitbeck) from January 1, 2020, through April 15, 2022, for leaving only one person working in one of Respondent's stores and thereby violating the two-employee rule. (Tr. 72–74, 653–654, 679; see also Tr. 14 and GC Exh. 33(i) (item 17) (representing that Respondent did not have any responsive documents to the General Counsel's subpoena request for the personnel files of employees in Michigan who were discharged for violating the two-employee rule in the specified timeframe).)[20]

4. Comparator evidence—delay between incident and discipline/discharge

Under Respondent's policies, investigations into alleged misconduct generally should be prompt, thorough, and objective. (Tr. 718–720; R. Exh. 18 at 17.) Consistent with that policy, in the latter part of 2021, Gibbons planned to issue a corrective action form to employee L.R. for time and attendance issues. Because Gibbons did not issue the corrective action form in a timely manner (i.e., shortly after the dates on which the attendance issues occurred), District Manager Olga Shuvalova directed Gibbons to refrain from taking corrective action at that time. (Tr. 290–292; see also GC Exh. 37 (corrective action form that Gibbons issued to L.R. on February 7, 2022, after additional time and attendance issues arose).)

Regarding the delay between the February 27 incident and Whitbeck's discharge on April 11, Lind was not aware of an employee besides Whitbeck being discharged for an incident that happened 6 weeks beforehand. Schmehl also was not aware of any employees in Michigan being discharged in 2022, after a 6-week delay, but indicated that such delays with discipline/discharge occurred when she worked in another location. (Tr. 92, 678–679.)

O. April 14, 2022—Respondent Discharges B.G.

Respondent discharged B.G. on April 14, citing B.G.'s use of profanity in the café area of the store on February 27. B.G.'s notice of separation form (prepared by Schmehl) states:

> This document shall serve as Notice of Separation for [shift supervisor B.G.] who failed to communicate in a manner that is reflective of Starbucks Mission and Values when:
>
> On 2/27/22, [B.G.] used profanity in the front of the house, saying "Does [L.R.] know how much shit you talk about [L.R.]?"
>
> Pg 43 Partner Manual – How we communicate – Partners are expected to communicate with other partners and customers in a professional and respectful manner at all times. The use of vulgar or profane language is not acceptable.

(GC Exh. 23; Tr. 69–72, 217, 652–653, 659–660, 684.) B.G. did not have any prior discipline with Respondent before being discharged and had expressed anti-union views during the union organizing campaign. (Tr. 493, 652.)

DISCUSSION AND ANALYSIS

A. Credibility Findings

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or

[19] I find that entering the store alone is equivalent to any violation of Respondent's two employee rule (i.e., the two-employee rule requires two employees to be in the store at all times, and entering the store alone is one example of how an employee can violate the rule). Consistent with my finding, Respondent supported its decision to discharge Whitbeck by referring to a Store Operations Manual provision about the requirement that stores open with a minimum of two employees (when Whitbeck's infraction involved violating the two-employee rule after the store was already open). (See FOF, Sec. II(N)(2), supra.)

[20] Schmehl testified that on 5 to 10 occasions she was involved in discharging an employee for violating Respondent's safety and security policy when the employee had no prior discipline on their record. In the absence of any details about what violations and circumstances were at issue on those occasions, I find that Schmehl's testimony on this point carries no weight as comparator evidence. (Tr. 653; see also GC Exh. 41 (disciplinary job aid for safety and security violations identifying 15 examples of safety and security violations and identifying "threatening a peer or customer with physical violence" as the only example of a safety and security violation where termination would be customary).)

admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). To the extent that credibility issues arose in this case, I have stated my credibility findings in the Findings of Fact above.[21]

B. Applicable Legal Standard

The legal standard for evaluating whether an adverse employment action violates Section 8(a)(3) of the Act is generally set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). To sustain a finding of discrimination, the General Counsel must make an initial showing that the employee's union or other protected activity was a motivating factor in the employer's decision. The elements commonly required to support such a showing are union or protected concerted activity by the employee, employer knowledge of that activity, and animus on the part of the employer. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 2–3 (2019). Proof of discriminatory motivation (animus) can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. Circumstantial evidence of discriminatory motivation may include evidence of: suspicious timing; false or shifting reasons provided for the adverse employment action; deviating from a regular practice of adequately investigating alleged employee misconduct; tolerance of behavior for which the employee was allegedly fired; and/or disparate treatment of the employee. See *Volvo Group North America, LLC*, 370 NLRB No. 52, slip op. at 3 (2020); *Medic One, Inc.*, 331 NLRB 464, 475 (2000). The evidence must be sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee. *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 8 (2019).

If the General Counsel makes the required initial showing, then the burden shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee's union or protected activity. In order to meet that burden, the employer need not prove that the disciplined employee committed the misconduct alleged. Instead, the employer only needs to show that it had a reasonable belief that the employee committed the alleged offense, and that it acted on that belief when it took the disciplinary action against the employee. *McKesson Drug Co.*, 337 NLRB 935, 937 fn. 7 (2002); see also *Bally's Atlantic City*, 355 NLRB 1319, 1321 (2010) (explaining that where the General Counsel makes a strong initial showing of discriminatory motivation, the respondent's rebuttal burden is substantial), enfd. 646 F.3d 929 (D.C. Cir. 2011). The General Counsel may offer proof that the employer's reasons for the personnel decision were false or pretextual. When the employer's stated reasons for its decision are found to be pretextual—that is, either false or not in fact relied upon—discriminatory motive may be inferred but such an inference is not compelled. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (noting that the Board may infer from the pretextual nature of an employer's proffered justification that the employer acted out of union animus where the surrounding facts tend to reinforce that inference). A respondent's defense does not fail simply because not all the evidence supports its defense or because some evidence tends to refute it. Ultimately, the General Counsel retains the burden of proving discrimination. *Farm Fresh Co., Target One, LLC*, 361 NLRB at 861.[22]

Under Section 8(a)(4) of the Act, an employer may not discriminate against an employee for participating in the Board's processes, including filing charges, testifying, or being subpoenaed to testify at a Board proceeding. The Board applies the same *Wright Line* framework described above to determine whether an adverse employment action was for reasons that are prohibited by Section 8(a)(4). *S. Freedman & Sons, Inc.*, 364 NLRB 1203, 1205–1206 (2016), enfd. 713 Fed. Appx. 152 (4th Cir. 2017).

C. Did Respondent Violate the Act by Failing to Have Whitbeck Count and Distribute Tips?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act by, on about March 21, 2022, removing Hannah Whitbeck's job assignment of distributing tips to its employees because she assisted and supported the Union and engaged in protected concerted activities, and to discourage employees from engaging in those activities.

2. Analysis

The evidentiary record establishes that from February through April 2022, while Respondent employed a series of different store managers at the Main and Liberty store, Respondent occasionally issued work schedules that contained errors or

[21] Respondent suggests that I should not find Whitbeck's testimony credible because of an internet posting that she made in 2019. In the internet posting, Whitbeck wrote that she lied or exaggerated to make herself seem interesting enough for other people to pay attention. Whitbeck explained during trial that she made the internet posting as part of a discussion thread for individuals who have a mental health condition. Whitbeck added that since making the posting she has obtained a significant amount of help to address the condition. (R. Exh. 23; Tr. 526, 528, 534–535.)

I give little weight to the internet posting. First, Whitbeck made the posting over 2 years before the events and trial in this case. Accordingly, the posting is arguably too remote in time to be relevant. Second, I did not find any instances in the record where Whitbeck testified untruthfully. To the contrary, Whitbeck was poised and forthright during her testimony and much of her testimony is corroborated by other evidence in the record.

[22] The General Counsel maintains that the Board should overrule its decisions in *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120 and *Electrolux Home Products*, 368 NLRB No. 34. (GC Posttrial Br. at 48–66.) I am bound to follow the Board's current precedent and leave the General Counsel's request for revisiting that precedent to the Board should this decision be appealed.

omissions. For example, for the week of February 28, Lind did not assign any noncoverage time to employees at the store. Notwithstanding that oversight, Whitbeck counted and distributed tips on February 28. Similarly, for March 21, Lind and Prince did not schedule Whitbeck for any non-coverage time and did not schedule any other employee to count and distribute tips instead of Whitbeck. Whitbeck did not handle tips that week, as Lind decided to train a barista at the Main and Liberty store to count and distribute tips on March 24. Whitbeck resumed counting tips during the weeks of March 28 and April 4 despite not being scheduled enough (or any) noncoverage time for that purpose. (FOF, Sec. II(A)(1), (C)(1), (K)(2).)

Based on the evidentiary record, I find that Respondent did not assign Whitbeck to count and distribute tips on March 21, 2022, because of a scheduling oversight. Even if I assume, *arguendo*, that the General Counsel presented enough evidence to make an initial showing of discrimination, Respondent has shown that it would have skipped assigning tip counting duties to Whitbeck on March 21 even in the absence of Whitbeck's union and protected activities. Respondent changed store managers at the Main and Liberty store on four occasions in February/March 2022, including two occasions during which Lind was managing both the Main and Liberty store and the South University store. Respondent's failure to schedule Whitbeck to count tips on March 21 was one of multiple scheduling errors or omissions that occurred while Respondent transitioned through various store managers at the Main and Liberty store.

In making these findings I note that I considered the fact that Lind knew Whitbeck normally counted tips, as well as the fact that Lind did not provide an explanation when Whitbeck asked why she was not assigned to count tips on March 21 (though Lind did offer to speak with Whitbeck about the issue). It suffices to say that those facts do not undermine the evidence that Respondent did not assign Whitbeck to count tips on March 21 due to a scheduling oversight. To the extent that Lind subsequently opted to have a barista count tips that week instead of Whitbeck, that decision was consistent with Lind's practice of training multiple employees to count tips at her home store (South University). (FOF, Sec. II(K)(2).)

In sum, I find merit to Respondent's affirmative defense and also find that the General Counsel fell short of meeting its burden of proving that Respondent discriminated against Whitbeck when it did not assign her to count tips on March 21. I therefore recommend that the complaint allegations regarding the removal of Whitbeck's tip counting assignment on March 21 be dismissed.

D. Did Respondent Violate the Act when it Discharged Whitbeck?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act by, on about April 11, 2022, discharging Hannah Whitbeck because she assisted and supported the Union and engaged in protected concerted activities, and to discourage employees from engaging in those activities.

The General Counsel also alleges that Respondent violated Section 8(a)(4) and (1) of the Act by, on about April 11, 2022, discharging Hannah Whitbeck because she was subpoenaed to testify at a Board hearing in Case 07–RC–290295, because she attended a Board proceeding in Case 07–RC–290295, and because the Union filed Case 07–CA–292971 on Whitbeck's behalf.

2. Analysis

The evidentiary record shows that on February 27, 2022, while the union organizing campaign was in progress, Whitbeck violated Respondent's two employee rule by leaving one of her coworkers alone in the Main and Liberty store. (FOF, Sec. II(B), (E).) The issue presented is whether Respondent disciplined Whitbeck more severely for that infraction (specifically, by discharging her instead of issuing a final written warning) because she engaged in union or other protected concerted activities and/or because she participated in Board proceedings.

The General Counsel made an initial showing that Whitbeck's union or other protected activities were a motivating factor in Respondent's decision to discharge her. There is no dispute that Whitbeck engaged in the following activities about which Respondent was aware before discharging Whitbeck on April 11, 2022: (a) signing (along with 7 named coworkers and with the support of other anonymous coworkers) and sending the February 4, 2022 letter to Respondent's President and CEO to demand that Respondent recognize the Union at the Main and Liberty store; (b) regularly wearing a union button while at work in February through April 2022, and thereby indicating that she supported unionization at the store; and (c) attending videoconference Board proceedings in Case 07–RC–290295 in early March 2022. (FOF, Sec. II(B)(2)–(3), (G); see also R. Posttrial Br. at 20 fn. 7 (stating that for purposes of the prima facie case, Respondent does not dispute that it was aware of Whitbeck's support for the Union).)

Although the Union filed an unfair labor practice charge on Whitbeck's behalf on March 23, 2022 (Case 07–CA–292971, alleging that Respondent unlawfully removed Whitbeck's tip counting assignment), I do not find that this activity factored into Respondent's decision to discharge Whitbeck. Schmehl recommended that Whitbeck be discharged on about March 21, 2022, 2 days before the Union filed the charge, and at least a week before Respondent's attorneys received a copy of the charge.[23] (FOF, Sec. II(I)(3), (L).) Whitbeck's discharge was therefore already being processed by the time Respondent received notice of the unfair labor practice charge in Case 07–CA–292971.

The General Counsel also demonstrated, as part of its initial

[23] The General Counsel mailed a copy of the unfair labor practice charge to Respondent's attorneys on March 28, 2022, and 1 day later, Respondent's attorneys began filing notices of appearances with the Regional Director for Region 7. (FOF, Sec. II(L).) During trial, the General Counsel sought to call Respondent's attorney as a witness to confirm that he filed his March 30, 2022 notice of appearance after receiving a copy of the unfair labor practice charge. I denied the General Counsel's request, finding that the testimony that the General Counsel sought would be cumulative (since, among other things, Respondent admitted in its answer that the General Counsel served, via U.S. mail, Respondent with a copy of the charge on March 28). (Tr. 567–568.) I stand by that ruling, which is further supported by my findings that establish that Schmehl recommended Whitbeck's discharge before the Union filed the unfair labor practice charge.

showing, that Respondent acted with animus when it discharged Whitbeck. First, the General Counsel demonstrated that Schmehl, one of the principal decisionmakers for Whitbeck's discharge, harbored animus against the Union and its supporters. On March 20, 2022, when Schmehl attended the "sip in" at the Zeeb Road store, Schmehl sat in the café of the store for 3 hours and monitored what individuals were posting on the community board after the individuals obtained sticky notes from a union organizer in front of the store. Schmehl also, on at least 3 occasions during the sip in, removed all sticky notes from the community board. (FOF, Sec. II(J).) Schmehl's presence in the store for that length of time and for the limited purpose of monitoring the sip in (including monitoring what was posted on the community board) was unusual and arguably created an impression of surveillance where a reasonable employee would assume that their union or other protected activities have been placed under surveillance. See *Metro One Loss Prevention Services*, 356 NLRB 89, 102 (2010) (describing the legal standard for whether an employer has created an unlawful impression of surveillance). To be sure, the complaint in this case does not allege that Schmehl unlawfully created an impression of surveillance at the Zeeb Road store; the fact remains, however, that Schmehl's conduct at the sip in supports a finding of animus here.[24]

Second, the General Counsel presented evidence of disparate treatment. Respondent's job aid regarding discipline for safety and security violations (a non-binding document) indicates that when an employee violates the two-employee rule, the customary discipline is a final written warning. Consistent with the job aid, employee A.H. received a final written warning in early 2021, for violating the two employee rule and putting hands on a coworker.[25] By contrast, Respondent discharged Whitbeck solely for violating the two employee rule.[26] (FOF, Sec. II(N)(2)–(3).)

While I find disparate treatment regarding the level of discipline that Respondent issued to Whitbeck, I do not find disparate treatment regarding the delay between the infraction on February 27 and Whitbeck's discharge on April 11. (See GC Posttrial Br. at 39–40.) The delay in discharging Whitbeck occurred because Respondent needed time to obtain witness statements and complete consultations involving the PRSC and Respondent's legal department, and because it took an additional week to find a date when both Lind and Gonzalez could meet with Whitbeck to notify her that she was being discharged. (See FOF, Sec. II(F), (I), (N)(1).) The General Counsel's example of attendance discipline that Respondent considered but deemed untimely is not an apt comparison, as the evidentiary record does not show that the delay in the proposed attendance discipline resulted from a complex investigation or issues with finding a time to carry out the discipline. (See FOF, Sec. II(N)(4).)

Third, the General Counsel demonstrated that Respondent deviated from its usual investigation practices when investigating Whitbeck's conduct on February 27, 2022, and when deciding that discharge was the appropriate level of discipline for Whitbeck's conduct. Respondent's disciplinary policy states, among other things, that "[t]he form of corrective action taken will depend on the seriousness of the situation and the surrounding circumstances." Those surrounding circumstances include aggravating or mitigating factors related to the misconduct at issue. Notwithstanding that policy, Respondent: did not ask Whitbeck to explain why she could not stay at the store past 7 p.m., even though Whitbeck stated in her incident report that she had to leave for "something serious"; and did not consider the fact that the risk of a violation of the two employee rule on February 27 originated, at least in part, from Gibbons' and Lind's decision to schedule B.G.'s meal break for a time frame (6:45 to 7:15 p.m.) that overlapped with the 7 p.m. end of Whitbeck's shift.[27] (FOF, Sec. II(A)(3), (E)(1)–(2); see also R. Posttrial Br. at 29 (recognizing that mitigating and aggravating factors are relevant when Respondent investigates alleged employee misconduct such as a possible violation of the two-employee rule); Tr. 507 (counsel for Respondent asserting that "the reason a partner is left alone

[24] In connection with the question of whether Schmehl (or Lind) acted with animus, Respondent contends that there is no evidence that Schmehl or Lind made comments to Whitbeck that show animus, and there is no evidence that either manager knew that Whitbeck acted as a lead organizer during the union organizing campaign. (R. Posttrial Br. at 20–21.) As described herein, that type of evidence is not the only evidence that can demonstrate animus. Moreover, the evidence shows that Whitbeck stood out among her fellow union supporters in other ways that Respondent was aware of, including attending the board proceeding in Case 07–CA–290295, and violating the two-employee rule and thereby drawing more of Respondent's attention during the union organizing campaign. See *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 11 fn. 14 (2021) (explaining that while all six employees supported the union, two of those employees were convenient targets for retaliation because they were engaging in other conduct that made them stand out from the group).

[25] Respondent asserts that A.H.'s final written warning for violating the two-employee rule is not evidence of disparate treatment because Schmehl was not aware of it (since the disciplinary record apparently was lost). (R. Posttrial Br. at 25.) As previously noted, I credited Gibbons' testimony that she issued the discipline. (FOF, Sec. II(N)(3).) To the extent that Respondent did not maintain A.H.'s disciplinary paperwork such that Schmehl might have considered it as an example of how Respondent has disciplined employees for violating the two-employee rule, that failure is chargeable to Respondent rather than to Whitbeck.

[26] I am not persuaded by Respondent's argument that, due to the role of managerial discretion with discipline, there is no "blatant disparity" between the discipline that A.H. and Whitbeck received for violating the two-employee rule, and thus no disparate treatment. (See R. Posttrial Br. at 26–27; see also *New Otani Hotel & Garden*, 325 NLRB 928, 928 fn. 2, 941–942) (1998) (cited by Respondent).) This is not a case where Respondent had no guidelines in place regarding appropriate discipline for the infraction at issue. To the contrary, Respondent's job aid for safety and security violations indicates that a final written warning is customary when an employee violates the two-employee rule. A.H. received discipline that is consistent with the guidelines in the job aid, while Whitbeck did not, thereby supporting a finding of disparate treatment.

[27] Scheduling B.G.'s meal break from 6:45 to 7:15 p.m. unnecessarily created a risk that the two-employee rule would be violated when Whitbeck's shift ended at 7 p.m. Respondent could have scheduled B.G.'s February 27 meal break for an earlier time. Alternatively, if it was important to have B.G.'s meal break begin at 6:45 p.m., Respondent should have instructed B.G. to take a paid meal break in the store, as stated in Respondent's policies for meal breaks when only two employees are on duty. (FOF, Sec. II(E)(1)–(2).)

in the store absolutely plays some impact on the ultimate discipline that may be issued").)

Fourth, the timing of Whitbeck's discharge is suspicious. Specifically, Respondent decided to discharge Whitbeck (instead of issuing a final written warning as indicated on its job aid) in the midst of the union organizing campaign. That timing supports an inference that Whitbeck's support of the organizing campaign factored into Respondent's decision to opt for a more severe level of discipline for Whitbeck's violation of the two-employee rule. (FOF, Sec. II(B), (N)(2).) Viewed as a whole, the General Counsel's initial showing establishes a causal relationship between Whitbeck's union and protected concerted activities (including Whitbeck's participation in Board proceedings) and Respondent's decision to discharge her. Accordingly, I turn to the merits of Respondent's affirmative defense.

As its affirmative defense, Respondent maintains that it would have discharged Whitbeck irrespective of her union and protected concerted activities because Whitbeck knowingly violated the two-employee rule and failed to contact a manager for assistance before leaving her coworker alone in the store.[28] (R. Posttrial Br. at 35–36.) Respondent, however, did not present any evidence that a "knowing" violation of the two-employee rule and/or a failure to contact management for assistance mean that discharge is the appropriate level of discipline for violating the two-employee rule. Indeed, there is no comparator evidence in the record that Respondent has discharged anyone in Michigan (besides Whitbeck) for violating the two-employee rule. Further, Respondent's disciplinary job aid indicates that a final written warning, not discharge, is customary when an employee violates the two-employee rule. (FOF, Sec. II(N)(3).) Accordingly, I find that Respondent's affirmative defense fails.

Having considered the General Counsel's initial showing of discrimination and Respondent's unsuccessful affirmative defense, I find that the General Counsel met its burden of proving that Respondent discharged Whitbeck because she engaged in union and protected concerted activities, and because she participated in Board processes by attending a Board proceeding in Case 07–RC–290295. Accordingly, I find that Respondent violated Section 8(a)(3), (4), and (1) of the Act when it discharged Whitbeck on April 11, 2022.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By, on April 11, 2022, discharging Hannah Whitbeck because she engaged in union and protected concerted activities, Respondent violated Section 8(a)(3) and (1) of the Act.

4. By, on April 11, 2022, discharging Hannah Whitbeck because she attended a Board proceeding in Case 07–RC–290295 and thereby participated in Board processes, Respondent violated Section 8(a)(4) and (1) of the Act.

5. The unfair labor practices stated in conclusion of law 3–4, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

A. Standard Remedies

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Regarding Respondent's violation of Section 8(a)(3), (4), and (1) of the Act through its discharge of Hannah Whitbeck, I shall require Respondent to offer to reinstate Whitbeck to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges she would have enjoyed absent the discrimination against her. Respondent must also make Whitbeck whole for any loss of earnings and other benefits. The make whole remedy shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010).[29] Respondent shall also be required to expunge from its files any references to its unlawful decision discharge Whitbeck, and within 3 days of thereafter shall notify her that this has been done and that the unlawful decision will not be used against her in any way.

[28] Respondent asserts that its decision to discharge B.G., who was anti-union, also supports a conclusion that Respondent would have discharged Whitbeck irrespective of her union and protected activities. (R. Posttrial Br. at 36–37.) That argument misses the mark. First, Respondent discharged B.G. for saying the word "shit" one time while speaking to two coworkers in the store on February 27, 2022. (See FOF, Sec. II(O).) Since the evidentiary record does not include evidence about how Respondent normally handles that type of infraction, I do not have a basis to evaluate whether Respondent's decision to discharge B.G. was consistent with its policies or evaluate how Respondent's decision to discharge B.G. relates to Respondent's decision to discharge Whitbeck. Second, the Board has recognized that an employer may violate the Act by discharging a neutral employee to cover up the discharge of a pro-union employee during an organizing campaign. See *Embassy Vacation Resorts*, 340 NLRB 846, 848 fn. 13 (2003); *Bay Corrugated Container*, 310 NLRB 450, 451 (1993), enfd. 12 F.3d 213 (6th Cir. 1993). The parties did not develop that theory here, but the point remains that Respondent demonstrates little by referring to the stand-alone fact that, in addition to discharging Whitbeck, it also discharged B.G.

Respondent also asserts that it would have terminated Whitbeck regardless of her union and protected activities because Whitbeck's justification for leaving the store on February 27 was not truthful. (R. Posttrial Br. at 37–39.) That argument lacks merit. As a preliminary matter, I found Whitbeck to be credible when she testified that she could not stay past the end of her shift on February 27 because she needed to visit her grandfather who experienced a heart attack earlier that day. (FOF, Sec. II(E)(3).) Further, during its investigation of the February 27 incident, Respondent did not ask Whitbeck why she could not have stayed in the store past the end of her shift, much less investigate the truthfulness of Whitbeck's explanation. (Id.) Because of those facts, Respondent cannot now maintain that it discharged Whitbeck because Whitbeck's rationale for leaving the store was false.

[29] To the extent that the General Counsel requests consequential damages (see GC Posttrial Br. at 69–84), I deny the request but note that the issue is currently under review by the Board. See *Thryv, Inc.*, 371 NLRB No. 37 (2021).

In accordance with *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), Respondent shall compensate Whitbeck for her search-for-work and interim employment expenses regardless of whether those expenses exceed her interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB 101 (2014), Respondent shall compensate Whitbeck for the adverse tax consequences, if any, of receiving a lump-sum backpay award. In addition, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB 1324 (2016) and *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 7 a report allocating backpay to the appropriate calendar year(s). Respondent shall also, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Directory may allow for good cause shown, file a copy of Whitbeck's W-2 form(s) reflecting the backpay award. The Regional Director will then assume responsibility for transmitting the report and W–2 form(s) to the Social Security Administration at the appropriate time and in the appropriate manner.

B. Special Remedies

1. Nationwide notice posting

The General Counsel asks that I order Respondent to post a Notice at all of its facilities in the United States and its territories for the length of the organizing campaign, and also distribute the notice electronically to all such employees, including by text messaging, social media postings, and postings on internal apps and intranet websites if Respondent communicates with its employees by those means. (GC Exh. 36 at 2 (pars. i and j); see also GC Posttrial Br. at 68.)

Customarily, the Board confines the notice-posting requirements of its orders "to the facilities at which the violations were committed." *Consolidated Edison Co. of New York*, 323 NLRB 910, 911–912 (1997). Thus, if a respondent commits unfair labor practices at only one of its facilities, the remedy should include a notice posting only at that one facility.

To establish a basis for a nationwide notice posting, the General Counsel could argue that a nationwide notice posting is necessary because the respondent implemented an unlawful work rule or policy at each of its facilities nationwide. See *Guardsmark, LLC*, 344 NLRB 809, 812 (2005) (noting that "we have consistently held that, where an employer's overbroad rule is maintained as a companywide policy, we will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect," and ordering a nationwide notice posting because the respondent's work rules applied to all of its employees nationwide), enfd. in pertinent part, 475 F.3d 369 (D.C. Cir. 2007); see also *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 160 (2014) (ordering a nationwide notice posting to address an unlawful work rule that had been or was in effect at each of the respondent's facilities); *Labor Ready, Inc.*, 327 NLRB 1055, 1055 fn. 2, 1060 (1999) (same, regarding a respondent's unlawful decision to ban a job applicant from all of respondent's offices because he solicited other job applicants to sign a work-related petition), enfd. 253 F.3d 195 (4th Cir. 2001). The General Counsel does not rely on such a theory in this case.

The General Counsel could also argue that a nationwide notice posting is appropriate because the respondent has a record of committing unfair labor practices in multiple facilities (but not necessarily all of its facilities), such that the Board should invoke its authority to issue a broad, corporate-wide order that would include a notice posting requirement beyond the facilities directly involved in the unfair labor practices. See, e.g., *Albertson's, Inc.*, 351 NLRB 254, 384 (2007) (collecting cases). The General Counsel invokes that rationale here, see GC Posttrial Br. at 68, but fell short of demonstrating a basis for a nationwide remedy. Although the General Counsel contends that Respondent has committed multiple unfair labor practices across the country and referred to complaints filed in various locations, at the time of the trial in this case the General Counsel had not yet litigated those cases to final conclusions. (See Tr. 582.) Since the violations that I found in this case occurred at only one store and the General Counsel did not establish that Respondent has a record of committing unfair labor practices in multiple facilities across the country, I deny the General Counsel's request for a nationwide notice posting.

2. Notice reading

The General Counsel has requested, as a special remedy, that I require Respondent to have a high-ranking management official read the notice aloud at the Main and Liberty store to employees at a meeting or meetings that are convened for that purpose and are scheduled to ensure the widest possible attendance of employees. (GC Exh. 36 at 2 (par. h).) The Board has found a notice-reading remedy appropriate where the employer's violations are sufficiently numerous and serious that a reading of the notice is warranted to dissipate the chilling effect of the violations on employees' willingness to exercise their Section 7 rights. *Amerinox Processing, Inc.*, 371 NLRB No. 105, slip op. at 2 (2022); *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 1 (2022).

I find that a notice reading is warranted here to ensure that employees will fully perceive that Respondent and its managers are bound by the requirements of the Act. By unlawfully discharging Whitbeck during the organizing campaign, Respondent sent a message to employees that those who supported the Union did so at their own peril. I find that the message sent as a result of Whitbeck's unlawful discharge was sufficiently serious to create a chilling effect on the employees' willingness to exercise their Section 7 rights. See *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 2.

The Board has explained that in cases where a particular manager, to the knowledge of employees, was directly responsible for the violations that justified the notice-reading remedy, the Board has required that individual (or a Board agent in that individual's presence) to read the notice in order to make the remedy fully effective. *Amerinox Processing, Inc.*, 371 NLRB No. 105,

slip op. at 3. Following that precedent, I specify that the notice shall be read to employees at the Main and Liberty store by Respondent's District Manager, Paige Schmehl, who was directly involved in the unlawful decision to discharge Whitbeck. Alternatively, Respondent may elect to have an agent of the Board read the notice with Schmehl present. If Schmehl no longer works for Respondent at the time of the notice reading, then Respondent shall send an equally high-ranking management official in Schmehl's stead.

3. Scope and content of notice posting

The General Counsel requests that Respondent be required to post a Notice and an "Explanation of Rights" in all Michigan facilities for 90 days, and also post the Notice and Explanation of Rights on Respondent's Facebook page and Partner Hub website. In addition, the General Counsel requests that I require Respondent to email a copy of the Explanation of Rights to all employees at the Main and Liberty store. (GC Exh. 36 at 2 (par. g).)

I deny the General Counsel's request for these additional remedies. The notice posting and notice reading remedies that I have ordered will accomplish the goal of assuring employees that they may exercise their Section 7 rights free of coercion and that Respondent and its managers are bound by the requirements of the Act. I do not see a basis for expanding the length or scope of the notice posting remedies, particularly given that the violations of the Act that I have found in this case occurred at a single store location (the Main and Liberty store).[30]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[31]

ORDER

Respondent, Starbucks Corporation, Ann Arbor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engage in union and protected concerted activities.

(b) Discharging employees because they participate in Board processes, including but not limited to attending Board proceedings.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this order, offer to reinstate Hannah Whitbeck 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.

(b) Make Hannah Whitbeck whole for any loss of earnings or benefits she may have suffered as a result of the discrimination against her, plus daily compounded interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful decision to discharge Hannah Whitbeck 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.

(d) Compensate Hannah Whitbeck for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(e) File with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Hannah Whitbeck's W-2 form(s) reflecting the backpay award.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Main and Liberty store in Ann Arbor, Michigan, a copy of the attached notice marked "Appendix A."[32] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of

[30] The General Counsel also requested the following additional remedies: (a) that I require Respondent to pay Whitbeck front pay should she waive her right to reinstatement to her former position; (b) that I require Respondent to distribute the Notice and the Board's Orders to current and new supervisors and managers; and (c) that I require Respondent to train employees, supervisors, and managers on employee rights under the Act, including by permitting a Board agent to conduct the training. (See GC Exh. 36 at 2–3 (pars. e, i); GC Posttrial Br. 85–86.) I decline the General Counsel's request for these additional remedies, as the remedies that I have set forth herein are sufficient to address Respondent's violations of the Act.

[31] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[32] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work, and the notices may not be posted until a substantial complement of employees has returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means.

If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at the facility at any time since April 11, 2022.

(h) Hold a meeting or meetings during work time at its Main and Liberty store in Ann Arbor, Michigan, scheduled to ensure the widest possible attendance of employees, at which the attached notice marked "Appendix A" will be read to employees by District Manager Paige Schmehl (or an equally high-ranking management official if Respondent no longer employs Schmehl), in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at Respondent's option, by a Board agent in the presence of Schmehl and, if the Union so desires, an agent of the Union.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

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 Hannah Whitbeck 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.

WE WILL make Hannah Whitbeck 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 Hannah Whitbeck 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 Hannah Whitbeck for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 7, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Hannah Whitbeck's W–2 form(s) reflecting the 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 Paige Schmehl (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 CORPORATION

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CA-292971 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

Corrections to Transcript
Starbucks Corporation, 7–CA–292971, et al.

P. 14, l. 3: Mr. Hult was the speaker
P. 15, l. 4: "due" should be "through"
P. 87, l. 5: "tore" should be "store"
P. 93, l. 25: "50" should be "15"
P. 96, l. 16: Mr. Hult was the speaker
P. 145, l. 23: "rebuttal" should be "respondent's"
P. 162 , l. 23: "note" should be "nope"
P. 163, l. 1: "note" should be "nope"

P. 171, l. 1: “It’s not overstated” should be “Let’s not overstate it”
P. 177, l. 12: “respondent” should be “respondent 3”
P. 182, l. 11: “he needed” should be “she needed”
P. 188, l. 24” “(inaudible) respondent for rejection” should be “I’ll admit respondent 4 over objection”
P. 200, l. 15: “board” should be “reporter”
P. 208, l. 9: “Lamott’s” should be “Meloche’s”
P. 294, ll. 12, 14: “(inaudible)” should be “Jencks”
P. 317, l. 16: “direct” should be “corrective”
P. 323, l. 19: “responsible” should be “responsive”
P. 337, l. 8: “(inaudible)” should be “Jencks”
P. 357, l. 25: “backup” should be “back of the”
P. 375, l. 19: “backup” should be “back of the”
P. 342, l. 6: “she” should be “he”
P. 405, l. 25: “stopped” should be “stocked”
P. 426, l. 8: “evidence to your” should be “the evidentiary”
P. 448, l. 12: Mr. Smith was the speaker
P. 451, l. 15: “data” should be “date of”
P. 461, l. 7: “adaptive” should be “redacted”
P. 462, l. 17: “it proper” should be “a proffer”
P. 464, l. 5: “natural” should be “national”
P. 466, l. 2: “broken” should be “appropriate”
p. 468, l. 19: “for” should be “or”
P. 469, l. 1: “and reject the exhibit is filed” should be “in the rejected exhibits file”
P. 471, ll. 20-21: “right to dispose” should be “cite to disclose”
P. 472, l. 1: “natural” should be “national”
P. 483, l. 24: “proof” should be “Crew”
P. 502, l. 2: “Linda” should be “Lind a”
P. 504, l. 7: “set job” should be “set you up”
P. 527, l. 22: “I’ll” should be “I don’t”
P. 529, l. 2: “identify the if” should be “identify the link if”
P. 529, l. 8: “between three” should be “twenty-three”
P. 529, l. 9: “way” should be “weight”
P. 534, l. 2: “line three” should be “twenty-three”
P. 537, l. 10: “launch” should be “lunch”
P. 544, ll. 19-20 (throughout): “their schedule would” should be “their scheduled”
P. 552, l. 10: “gang” should be “Jencks”
P. 569, l. 19 : “next circle” should be “excerpt”
P. 569, l. 21: “we take care is” should be “weight it carries”
P. 569, l. 22: “and administer” should be “animus or”
P. 588, l. 6: “responding” should be “respondent”
P. 588, l. 8: “faculty” should be “backward”
P. 588, l. 12: “re-discharged” should be “pre-discharge”
P. 605, l. 20: “defenses” should be “offenses”
P. 621, l. 4: “score” should be “store”
P. 681, l. 3: “you’ve” should be “she has”
P. 686, l. 22: “important” should be “a point”
P. 700, l. 7: “greases” should be “baristas”
P. 712, l. 22: Mr. Lichtman was the speaker
P. 715, l. 13: “consult” should be “counsel”
P. 733, l. 13: “Our” should be “Aren’t”
P. 733, l. 23: “in captain” should be “kept in”
P. 739, l. 20: Mr. Hult was the speaker
P. 740, l. 16: “exhibits” should be “evidence”
P. 741, l. 12: “failing” should be “prevailing”
P. 741, ll. 16-17: “griefs. My” should be “briefs for my”
Throughout: the “b” in employee B.G.’s last name should be a “v”