

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES- NEW YORK BRANCH OFFICE

STARBUCKS CORPORATION

CASE NO. 29-CA-308059

and

WORKERS UNITED, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL
UNION

Linda Tooker and Samuel Rubinstein, Esqs.
for the General Counsel

Ethan Balsam, James Thelen, and Michael LaCourse, Esqs.
for the Respondent

Carley Russell, Esq.
for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL P. SILVERSTEIN, Administrative Law Judge. In this case, the General Counsel alleges that Starbucks Corporation (Respondent) has maintained an overly broad and discriminatory rule restricting the use of logos, writings or graphics on clothing worn by its store partners. The General Counsel further alleges that Respondent more strictly, and selectively and disparately enforced this rule by prohibiting employees at its Caesar's Bay store in Brooklyn, New York from wearing t-shirts emblazoned with the Union's logo while allowing employees to wear other clothing violative of dress code rules. Furthermore, the General Counsel alleges that Respondent unlawfully sent home several Caesar's Bay employees and issued employees Megan DiMotta and Elizabeth Kurchak documented coachings in furtherance of the overly broad and discriminatory dress code rules, and in response to employees' union activities. As will be explained *infra*, I find merit to the above-referenced allegations.

The General Counsel also alleges that in about late September or early October 2022, at its Caesar's Bay location, Respondent promulgated (or repromulgated) the same dress code rules referenced above, and that Respondent promulgated and maintained these rules in response to union or other protected activities. As will be explained *infra*, I recommend dismissal of these two allegations.

Workers United, a/w Service Employees International Union (the Union or Charging Party) filed the charge in this case on November 30, 2022. The Complaint issued on November 16, 2023 and Respondent filed its Answer on November 30¹.

The record in this case opened via the Zoom for Government platform on January 16, 2024, and continued in-person in Brooklyn, New York on January 17 and 18. The hearing resumed virtually on January 24 to address subpoena issues and continued in-person on January 31, February 1, and February 9.² At trial, all parties were afforded the right to call, examine, and cross-examine witnesses³, to present any relevant documentary evidence, and to argue their respective legal positions orally. Counsel for the General Counsel and Respondent filed post-hearing briefs.⁴

On the entire record, 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

JURISDICTION

Respondent admits, and I find, that it is a Washington corporation engaged in the retail operation of coffee shops throughout the United States, including the Caesar's Bay store that is the subject of this case, located at 8973 Bay Parkway, Brooklyn, New York. In conducting its business operations over the last 12 months, Respondent derived gross revenues in excess of \$500,000 and purchased and received goods at the Caesar's Bay store valued in excess of \$5,000 directly from points located outside the State of New York. Respondent also admits, and I find, that it has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

¹ I granted Counsel for the General Counsel's motion to amend the complaint during the first week of the hearing. The amendment clarified the date that Jennifer DeJesus Sanchez was sent home early and modified paragraph 9 of the complaint to specifically plead an allegation that Respondent more strictly enforced its dress code rules in response to Union activities. GC Ex. 4.

² The hearing was conducted concurrently with the hearing in Case 29-CA-305960, which involved Respondent's Forest and Bard location in Staten Island, New York. The two cases were not consolidated, but the parties agreed to litigate the cases simultaneously. Per the parties' agreement, each witness who testified was identified as testifying either for the Forest and Bard or Caesar's Bay cases. (Joint Ex. 1). Respondent clarified on the record that Constance Lange's testimony applied to both cases. Because the two cases were not consolidated, I have issued a separate decision for the Forest and Bard case.

³ The General Counsel called six witnesses – Casey Chen, Tania Vasquez, Jennifer DeJesus Sanchez, Elisa Hung, Megan DiMotta, and Elizabeth Kurchak – while the Respondent called four witnesses – Constance Lange, Jeremy Abril, Christopher Martinez, and Serena Addino.

⁴ On May 2, 2024, Respondent filed a Motion to Strike Counsel for the General Counsel's Post-Hearing Brief on the basis that this brief was untimely filed. On May 6, Counsel for the General Counsel filed its Opposition to the Motion to Strike. The due date for the post-hearing brief in this case was April 26, 2024. Section 102.2(b) of the Board's Rules and Regulations states that e-filed documents must be received by 11:59pm of the time zone of the receiving office on or before the last day permitted for such filing. In her Opposition to the Motion, Counsel for the General Counsel attached her e-filing confirmation receipt indicating that her post-hearing brief was received by the Division of Judges at 11:58pm on April 26. Thus, Counsel for the General Counsel timely filed her post-hearing brief in this matter, and I deny Respondent's Motion to Strike Counsel for the General Counsel's post-hearing brief.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction over this case pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

The facility involved in this case is Starbucks store #23267 located at 8973 Bay Parkway, Brooklyn, New York. This is a regular “neighborhood” store located in a shopping plaza alongside a Five Guys restaurant and a vitamin store. (Tr. 157, 305). There are no seats in the store – customers walk in the café to order beverages and food and consume their purchases elsewhere. (Tr. 157-158, 304). About 22 baristas work at this store. (Tr. 299). The current store manager is Jeremy Abril, who started in this position in early October 2023. (Tr. 746). Serena Addino was the store manager in the fall of 2022, when the alleged unfair labor practices occurred. (Tr. 847). Christopher Martinez became the district manager responsible for the Caesar’s Bay store in October 2022. (Tr. 777).⁵ The store opens to the public at 5:30am during the week and at 6:30am on the weekends. (Tr. 159, 300). When the store manager is not physically present in the store, there are four shift supervisors⁶ responsible for enforcing Respondent’s policies. (Tr. 187-188).

On February 12, 2022, the Union filed a representation petition with the Board seeking to represent employees working at the Caesar’s Bay location. The Board conducted a mail ballot election from April 8-29, 2022. The Union won the election 17-0 and on May 11, 2022, the Board certified the Union as the exclusive collective-bargaining representative of the full-time and regular part-time baristas and shift supervisors working at Respondent’s Caesar’s Bay store. (Joint Ex. 3; Tr. 302).

Respondent’s Dress Code

Respondent’s partner guide is the functional equivalent of an employee handbook. Embedded in this 90-page document is Respondent’s dress code and personal appearance policy. In relevant part, Respondent’s dress code states the following:

“Partners are the face of our brand, connecting with our customers every day. All partners are expected to follow these standards during the workday. Partners should direct questions to the store manager, who will decide what is appropriate or not within the dress code. Partners who come to work inappropriately dressed or with unacceptable appearance may not be permitted to start their shifts. Failure to adhere to the dress code may result in corrective action, including separation from employment...”

General Appearance, Colors and Materials (Joint Ex. 3, page 30/95)

Starbucks partners are expected to present a clean, neat and professional appearance when starting every shift. Clothing must fit properly and be clean, hemmed, wrinkle-free, in good repair, and safe and appropriate for a food service environment.

⁵ Respondent stipulates that Abril, Martinez, and Addino are supervisors and agents of Respondent within the meaning of Sections 2(11) and 2(13) of the Act. (Joint Ex. 3).

⁶ Respondent’s Partner Guide identifies the role of a shift supervisor as performing all the duties of a barista, as well as helping guide the work of others and assisting with ordering and accounting. (Joint Ex. 3, page 13).

Clothing colors must fall within a general color palette that includes white (for tops only), black, gray, navy blue, brown or khaki (tan). Other colors are only allowed as a small accent on shoes or for accessories (ties, scarves, socks, etc.).

5 *Shirts, Sweaters and Jackets (Joint Ex. 3, page 31/95)*

10 Shirts must be clean, wrinkle-free, and in a style appropriate for food service that allows freedom of movement but does not present a safety hazard. Shirts must cover the mid-section when arms are raised. Sleeves must cover the armpits. Sweatshirts and hooded shirts are not acceptable.

15 Shirts may have a small manufacturer's logo, but must not have other logos, writings or graphics. The base shirt color must be within the color palette (black, gray, navy blue, brown, khaki or white). These same colors may be the base color for a subdued, muted pattern. Starbucks-issued promotional shirts may be worn for events or when still relevant for product marketing.

20 Solid-color sweaters or jackets within the color palette may be worn. Other than a small manufacturer's logo, outerwear must not have logos or writings.

Starbuckscoffeegear.com offers reasonably priced, dress-code approved shirts for sale. Partners can also check the site for information on retail clothing discounts through vendor partnerships.

25 *Pants, Shorts, Skirts and Dresses (Joint Ex. 3, page 31/95)*

30 Pants, shorts and skirts must be practical for food service, durable, and fit comfortably without rips, tears, patches or distress. Solid colors within the color palette are allowed, except white. Athletic wear and stretchy-fabric leggings worn alone are not allowed.

Hats and Headwear

35 Hats are optional unless required by state or local laws. Where required, Starbucks will provide a Starbucks logo hat, or the partner can wear a personal hat in one of the styles below that meets regulations...

40 Optional personal hat styles include a Starbucks-logo hat or visor, a plain baseball cap, beanie, short-brimmed hat or other secured head covering (such as a headwrap or wide-knotted headband). Colors must be within the color palette (excluding white). A hat must be worn with the bill forward, and must be clean and free of snags, feathers, or other loose items. Hats issued to partners for a Starbucks promotion may be worn during the promotion.

Pins

45 Partners may only wear buttons or pins issued to the partner by Starbucks for special recognition or for advertising a Starbucks-sponsored event or promotion; and one reasonably sized and placed button or pin that identifies a particular labor organization or a partner's support for that organization, except if it interferes with safety or threatens to

harm customer relations or otherwise unreasonably interferes with Starbucks' public image. Pins must be securely fastened..."

Employees receive a copy of the partner guide when they are first hired. (Joint Ex. 3, page 2). During the fall 2022, the time period in which the alleged unfair labor practices took place in this case, Respondent distributed its partner guide both digitally and in print form. In about January 2023, Respondent ceased the print publication of the partner guide, switching to a digital-only format. (Tr. 532).

In addition to the full-dress code contained in the partner guide, Respondent also distributes a one-page dress code guide to employees on their first day of work. Respondent posts copies of this one-page dress code guide in its breakrooms. (GC Ex. 9, Joint Ex. 3, Resp. Ex. 2; Tr. 544). According to Constance Lange, this dress code guide is designed to be a summary of the dress code and does not contain the entire text of Respondent's dress code. (Tr. 541). It identifies the company-approved color palette (black, gray, navy, brown, khaki, and white), and specifies that "graphics, typography or large logos" are not permitted. Then the dress code specifies certain guidelines for what employees are permitted to wear in their hair and on their faces and aprons. Additional categories of bullet points clarify appropriate wear for employees' tops, bottoms, and footwear. There is no reference in this one-page dress code to pins that employees are permitted to wear to express their support for a labor organization.

Testimony Regarding Respondent's Dress Code

Constance Lange testified that store partners are the face of the brand and Respondent has a dress code so that partners know how to represent the brand. "They proudly showcase the green apron. The green apron is intended to be the focal point." (Tr. 559). Lange also noted that the dress code exists for partner safety and to comply with regulatory requirements regarding safe food handling practices. (Tr. 559).

Lange testified that Respondent's restrictions on the display of large graphics, logos, or writings has been in place since at least 2000. Lange attributes these restrictions to Respondent's concerns about partners wearing competitors' shirts, distracting writings, and inconsistent messaging with Respondent's brand. Thus, to make it clear for partners and easy for store managers to administer, Respondent does not allow its partners to wear clothes with writings, graphics, or logos other than a small manufacturer's logo. (Tr. 560-561). Lange made clear that it doesn't matter what the writing, graphic, or logo says – whether it is union-related or not – anything other than a small manufacturer's logo is not allowed. (Tr. 567).

When asked why graphics matter to Respondent if they are covered by the partner's green apron, Lange opined that partners take their aprons off to empty the trash at various points during their shifts. (Tr. 596). And while Lange noted that Respondent permits partners to express their support for a labor union in the form of a pin with a reasonably placed and sized logo, she confirmed that the same logo/graphic displayed on a pin would not be permitted on a partner's t-shirt simply because it violates Respondent's prohibition on graphics and writings on shirts. (Tr. 598).

There are, of course, exceptions to this rule. Partners can wear Starbucks-issued shirts for promotional product placement (e.g. Oleato), community service spotlights, and partner network shirts. Respondent sponsors about 12 partner networks (e.g. Pride partner network and

Refugee partner network⁷) to promote diversity and foster inclusion. (GC Ex. 11, Tr. 561-562, 589-590). Of these 12 partner networks, roughly five have shirts that are currently in production. Respondent's corporate legal department reviews the shirt designs to ensure they are brand appropriate. Some partner network shirts have graphics or writing on the front of the shirt, which may be partially obscured by the partners' green aprons. Other partner networks produced shirts in the past and Lange testified that partners are permitted to wear any past or present partner network t-shirts so long as they were issued by the partner network. (Tr. 563, 565, 585).⁸ Furthermore, Respondent's partner resources manual indicates that military and service spouses are permitted to wear specially embroidered aprons referring to the partner either as an Army Veteran or Army Spouse.⁹ (Resp. Ex. 7, Bates Stamp 00224). And those military dependents or parents not meeting the "veteran" or "spouse" criteria are authorized and encouraged to wear the "Military Supporter" pin available on starbuckscoffeegear.com.

Lange also testified about an exception to the dress code policy with the development of a Black Lives Matter (BLM) Starbucks t-shirt. Lange said that this t-shirt was not sponsored by one of the existing partner networks, but Respondent's partners of color wanted Respondent to take a stand on the issue. As a result, Respondent produced a BLM t-shirt that all partners could wear, despite the lack of compliance with Respondent's dress code. (GC Ex. 10; Tr. 585-586). As of the date of Lange's trial testimony, partners are still permitted to wear the BLM t-shirt at work. (Tr. 586).

Other occasions call for departures from strict adherence to Respondent's dress code. For Halloween, partners can wear costumes to work so long as the costumes comply with safety requirements. (Tr. 583). Lange also testified that if a local sports team is in the playoffs, employees are permitted to wear team specific clothing on certain days. (Tr. 601). Additionally, Respondent's partner relations division informed district managers that in the week leading up to Christmas, partners were permitted to wear any holiday or festive shirt that is approved by the store manager as long as it follows dress code guidelines, is business appropriate, and complies with health and safety compliance. (Resp. Ex. 10).

Baristas Megan DiMotta and Elizabeth Kurchak Wear Union T-Shirts to Work on October 15, 2022

Megan DiMotta has worked as a Starbucks barista since 2009 and has worked at the Caesar's Bay store since November 2016. (Tr. 298). DiMotta testified that she started wearing a Union t-shirt to work in February 2022 when the Union filed its representation petition for the Caesar's Bay store. (Tr. 339). The t-shirt was black with a circular logo containing a picture of a hand carrying a coffee shaker with the words "Starbucks Workers United" written in white font set against a green backdrop. (GC Ex. 6).

⁷ There is no Starbucks logo on the Refugee partner network t-shirt. (GC Ex. 11, Tr. 590).

⁸ Lange testified that a partner wearing a partner-network shirt communicates to other partners that there are partner network groups available to join. It also communicates to customers what these networks are, that these communities are welcome at Respondent, and that Respondent does not discriminate. (Tr. 564).

⁹ Similar embroidery reflecting service in the other branches of the military are also available.



DiMotta testified that while wearing her apron, only the very top part of the white circular logo was visible and the words “Starbucks Workers United” were not visible. (Tr. 340).
 5 DiMotta estimated that she wore this t-shirt to work two or three times each week and that while store managers and district managers observed her wearing this t-shirt, nobody informed DiMotta that this t-shirt did not comply with Respondent’s dress code. (Tr. 340, 342).

Elizabeth Kurchak has worked as a Starbucks barista since August 2021 and transferred
 10 to the Caesar’s Bay store in March 2022. (Tr. 412). Kurchak started wearing the Union t-shirt to work in about April 2022 and testified that when she wears the shirt under her green apron, only a tiny piece of the Workers United logo is visible. (Tr. 425-426).

In about late September 2022, Serena Addino spoke to DiMotta about Respondent’s dress
 15 code. DiMotta asked if there were changes to the dress code, Addino said that there had been no changes, but that she wanted DiMotta to sign and acknowledge the policy. DiMotta said that she had already signed and acknowledged the dress code when she was hired and didn’t see why she needed to sign the same policy again. Addino told DiMotta that she needed to know the policy, but Addino did not specifically reference the Union t-shirt in their discussion of Respondent’s
 20 dress code. (Tr. 343-344).

In about late September 2022, Addino spoke with Kurchak regarding the dress code.
 Like with DiMotta, Addino handed Kurchak a copy of Respondent’s dress code and asked her to
 25 sign a copy of the policy. Kurchak refused, indicating that she had signed the policy before, and it wasn’t her problem if Respondent was missing paperwork. (Tr. 427-428, 440).

On October 15, 2022, DiMotta and Kurchak worked the opening shift, arriving at
 6:00am.¹⁰ (Tr. 300, 344, 429). DiMotta wore the Union t-shirt under her apron that day. (Tr.
 344). Addino arrived about an hour into the shift and called DiMotta to the backroom. Addino
 30 told DiMotta that she couldn’t wear the Union t-shirt because it did not comply with Respondent’s dress code. DiMotta indicated that she wanted a Union representative present if she was going to be disciplined. Elizabeth Kurchak then joined Addino and DiMotta in the backroom. Kurchak was wearing the Union t-shirt as well and Addino said that she had to send both of them home for wearing the Union t-shirt.¹¹ DiMotta asked what kind of discipline they
 35 would receive and Addino said they would receive a written documented coaching. DiMotta indicated that she had worn the Union t-shirt under three managers and three district managers,

¹⁰ October 15, 2022 was a Saturday and the Caesar’s Bay store opened to the public at 6:30am on Saturdays.

¹¹ Kurchak affirmed that Addino offered her the opportunity to change into a different shirt in the store or go home and change shirts and then return to work. (Tr. 430, 441). DiMotta asserted at the hearing that Addino did not offer her the opportunity to change her shirt before being directed to leave the store. (Tr. 361).

and nobody had previously commented on the shirt. Addino confirmed that she was directed to send them home because they were wearing the Union t-shirt. (GC Ex. 12, Tr. 345).¹²

The following week, Addino issued DiMotta a corrective action form with the following narrative:

“This document serves as Megan DiMotta’s documented coaching for violating Starbucks’ Dress Code Policy. The Dress Code policy was reviewed and level set with all store partners on 9/30/22. Despite this, Megan had the following violation:

On 10/15/22, Megan came into work out of Dress Code. Megan was wearing a graphic t-shirt. Megan was offered the opportunity to change clothes as she would not be allowed to begin work out of dress code. Megan was sent home as she declined to change to meet the dress code.

The Dress Code policy can be found in the Partner Guide and states, “Shirts may have a small manufacturer’s logo, but must not have other logos, writings or graphics. The base shirt color must be within the color palette (black, gray, navy blue, brown, khaki or white). These same colors may be the base color for a subdued, muted pattern. Starbucks-issued promotional shirts may be worn for events or when still relevant for product marketing.”

Megan has been provided with the Partner Guide and acknowledges that continued violation of policy or behavior of this nature will result in further corrective action, up to and including separation. Megan may review the Dress Code in the Partner Guide and discuss any questions with the store manager.” DiMotta refused to sign the corrective action form. GC Ex. 13.¹³

Barista Jennifer DeJesus Sanchez is Sent Home Early for Wearing the Union T-Shirt to Work on October 24, 2022

Jennifer DeJesus Sanchez has worked as a barista at the Caesar’s Bay store since September 2019. (Tr. 206). DeJesus Sanchez wore the Union t-shirt to work about once a week, but the record is unclear as to when she began wearing the shirt. (Tr. 219-220). She testified that the Union logo was not visible when she wore the green apron over the Union t-shirt. (Tr. 221). On September 30, 2022, Addino reviewed the dress code with DeJesus Sanchez and DeJesus Sanchez initialed receipt of this document. (GC Ex. 9; Tr. 216-217).

Around this same time, Addino told her shift supervisors that they had to enforce the dress code for partners and told them that if the partners were not compliant with the dress code, the partners and the shift supervisors would be held accountable.¹⁴ (Tr. 187-188). Addino did not

¹² DiMotta recorded a portion of her conversation with Addino and that recording was admitted into evidence as GC Exhibit 12(a). DiMotta freely acknowledged in her testimony what the recording showed – that she was loud and upset during her interaction with Addino. (Tr. 346, 400).

¹³ Kurchak received a similarly worded corrective action form on October 24, 2022, which she refused to sign. (GC Ex. 15; Tr. 431-432).

¹⁴ Addino specifically corroborated this point on cross-examination. (Tr. 917).

specifically reference the Union during this meeting and did not say that the Union t-shirts violated the dress code. (Tr. 202-203).¹⁵

DeJesus Sanchez arrived for her 5:00am shift on October 24, 2022 wearing the Union t-shirt. Shift supervisor Tania Vasquez saw the Union shirt and told DeJesus Sanchez that she had to tell the manager (Serena Addino).¹⁶ (Tr. 189-190, 221-222). At 5:29am, Vasquez sent a text message to Addino indicating that DeJesus Sanchez showed up for work out of uniform and did not have a change of clothing. Addino responded via text by asking what DeJesus Sanchez was wearing. Vasquez replied, "the union shirt." Addino then wrote that if DeJesus Sanchez does not have a change of clothes, she can go home and change and come back, or if she doesn't want to, she'll be sent home and paid loss of hours¹⁷. Vasquez replied that DeJesus Sanchez decided to go home and not return because she did not have a change of clothes. Addino then indicated that Vasquez should wait to open the store and that Addino would temporarily disable mobile orders. (GC Ex. 8; Tr. 193, 223, 868-869).

Addino did not ask for a photo of what DeJesus Sanchez was wearing, nor did she speak with Vasquez over the phone or in person regarding this incident. (Tr. 193, 869). Addino did not speak with DeJesus Sanchez regarding the Union t-shirt episode and the Respondent did not discipline DeJesus Sanchez for wearing the Union t-shirt on October 24. (Tr. 224, 247). But unbeknownst to DeJesus Sanchez, Addino did reach out to partner relations regarding DeJesus Sanchez's conduct, drafted a corrective action form categorizing DeJesus Sanchez's punishment as a documented coaching, but never issued this discipline due to the passage of time between the incident in question and when Addino next worked with DeJesus Sanchez. (Resp. Ex. 10; Tr. 872-873).¹⁸

Multiple Partners are Sent Home Early on November 19, 2022 for Wearing the Union T-Shirt

On the morning of November 19, Megan DiMotta and Elizabeth Kurchak arrived for their morning shift wearing Union t-shirts. They had previously discussed with Casey Chen their plan to wear the Union t-shirt as a means of protest for the termination of their co-worker Fiona Fong the previous day.¹⁹ (Tr. 355, 401, 433-434).

About an hour into the shift, Addino arrived at the Caesar's Bay store and called DiMotta and Kurchak into the backroom. Addino told them that they needed to go home and change, or just go home, because they were wearing the Union t-shirts. DiMotta said that they were not out

¹⁵ During the meeting with her shift supervisors, Addino reviewed other Respondent policies such as counting milk and organizing the freezer. (Tr. 197).

¹⁶ Vasquez told DeJesus Sanchez that she had to tell the manager or else she (Vasquez) would get in trouble. (Tr. 222).

¹⁷ Pursuant to New York City regulations, DeJesus Sanchez received \$75 in predictability pay when she was sent home for the day. This was less than she would have been paid had she worked the entire shift. (Tr. 196, 224, 252).

¹⁸ Addino incredulously testified that she did not actually believe that DeJesus Sanchez was wearing the Union t-shirt on October 24, DeJesus Sanchez just wanted to go home without being held accountable for time and attendance, and that as her close friend, Vasquez conspired to fabricate this story. (Tr. 869-871). I specifically reject this testimony and discredit Addino to the extent her testimony conflicts with DeJesus Sanchez and Vasquez. In this regard, Addino quickly reported DeJesus' alleged misconduct to partner relations, drafted an error-prone narrative, yet failed to mention to partner relations her fanciful belief that the incident in question never actually happened.

¹⁹ The record does not reflect the reason for Fong's termination or why Fong's co-workers believed her termination was unjust. (Tr. 400).

of dress code and Addino did not need to send them home. DiMotta stated that the law protected their right to wear Union shirts and what Addino was doing was illegal. Addino disagreed, stating that she was enforcing Respondent's policy, and reiterated that they had to go home. (Tr. 356, 434, 441-442).

DiMotta testified that she was upset when Addino directed her to leave the store. DiMotta then told Addino to "keep this up and watch what happens." Addino took DiMotta's comments as a threat, but DiMotta clarified that she was just referring to filing unfair labor practices concerning Addino's alleged unlawful behavior. (Tr. 357-358). DiMotta and Kurchak then left the store and waited in the parking lot for Casey Chen because they expected a similar fate would befall Casey. (Tr. 358-359, 435).

Casey Chen testified that they wore the Union t-shirt to work about once a week during the Union campaign. After the Union won the election, Casey wore this shirt to work about once a month. (Tr. 147). While wearing this shirt over Casey's green apron, only the outer edges of the Starbucks Workers United logo was visible. (Tr. 148). On September 28, 2022, Addino handed Casey a copy of the dress code, reviewed the dress code with them, and directed Casey to sign the document. (GC Ex. 7; Tr. 136-137). Addino specifically told Casey that graphic t-shirts were not permitted. (Tr. 168-169).

On November 19, Casey clocked in sometime between 12:00pm and 12:30pm to begin their afternoon shift. Casey was wearing the Union t-shirt. (Tr. 149, 155, 159). In the back of the house, Addino noticed Casey's shirt and asked them if they had another shirt. Casey said no and Addino directed them to go home. (Tr. 150). As Casey walked to the front of the store, Addino followed. Casey noted that other partners were out of dress code that day. Casey specifically pointed out a partner wearing bright colored shoes. Addino said that this partner was employed at a different store and the dress code did not apply to her. (Tr. 151). Casey then pointed out that barista Elisa Hung was wearing white sneakers. Addino said in response that she was not aware of any portion of the dress code concerning white sneakers.²⁰ (Tr. 152-153). Casey did not receive their full pay for this shift and did not receive a written discipline for wearing the Union t-shirt to work. (Tr. 156). Casey estimates that after this November 19th incident, they wore the Union t-shirt to work 1-2 times/month. They were not sent home or asked to change their shirt on any occasion after November 19th. Casey did not receive any written discipline for wearing the Union t-shirt to work after November 19. (Tr. 156).

On November 19, 2022, Elisa Hung arrived for work wearing the Starbucks BLM t-shirt, jeans, and white sneakers. Hung worked almost the entire shift without incident. With about 15 minutes left in her shift, Addino approached Hung and said that she wasn't in uniform because she was wearing white shoes. Addino told Hung that she could leave and would be paid for the last 15 minutes of her shift. (GC Ex. 10; Tr. 277-281). Hung testified that she had worn the white sneakers to work on a few previous occasions but had never been told that the shoes were inconsistent with Respondent's dress code. (Tr. 282).

²⁰ Elizabeth Kurchak returned to the Caesar's Bay store to serve as Casey Chen's union representative. Kurchak corroborated Casey's testimony that they pointed out to Addino other employees who were working, but out of compliance with Respondent's dress code, and that Addino told Casey that the dress code did not apply to partners covering from another store. (Tr. 436-438).

Serena Addino's Testimony Regarding the Events of October 15th and November 19th

Addino began her tenure as Caesar's Bay store manager in August 2022. To reset expectations, Addino reviewed the partner guide handbook with store baristas in a series of one-on-one conversations. As part of these conversations, in about the end of September 2022, Addino reviewed Respondent's one-page dress code with all store partners. (Tr. 847, 850-853). During these conversations, some partners expressed concerns that the Union t-shirt was not permitted as part of Respondent's dress code. Addino testified that she told these partners that graphic tees are not allowed but did not specifically say that the Union t-shirt ran afoul of Respondent's dress code. Some partners also refused to sign the one-page dress code. Addino told them that they didn't have to sign the dress code, but if they did not comply with the dress code, they would be held accountable. (Tr. 853-854).

October 15th

On October 15, 2022, Addino worked the opening shift. Kurchak came into the store wearing the Union t-shirt and before she clocked in, Addino told her that she was out of dress code. Addino told her that she could go home, change, and then come back to work. Kurchak enlisted Megan DiMotta as her witness and DiMotta revealed that she too was wearing a Union t-shirt. Addino also gave DiMotta the option to go home, change her shirt, and then complete her shift. Both Kurchak and DiMotta refused this offer, telling Addino that her actions were illegal. Addino then asked them to leave the premises. (Tr. 857).

About an hour later, Addino emailed her partner relations contact a summary of her encounter with Kurchak and DiMotta. This email reads:

"...One of my openers Elizabeth came in in their Starbucks Workers United Tee-Shirt. I asked her if she had anything to change into, she said no. I told her I would have to send her home for not being in dress code unless she would want to go home and change. She walked to the front, not even a minute later, Megan came running back and they were standing in my face. Megan was very loud and aggressive saying if I'm sending Elizabeth home, I'm sending her home, took off her sweater and had the union tee shirt on. She then proceeded to record our conversation stating that the past 3 managers and DM never sent them home or told them they were not allowed to wear the Workers United Tee. I said "maybe they were not following policy, but I must follow policy, and this is the direction of the policy." She stated she wants to hear it from my DM himself. I said if you would like him present for the documentation, I will make sure he's here. She demanded documentation, I told her it would be delivered on her next shift. She said she'll have a rep present because this is illegal and union busting. I said that is no problem and they stormed out of the store. I was sure to let them know they would be paid loss of hours. I will call this in to PRSC, and I will also call the media hotline to let them know I was recorded..." (Resp. Ex. 17).

Later that afternoon, Addino reported to partner relations that DiMotta and Kurchak stayed in front of the store for about an hour holding signs and directing customers to yell at Addino. (Resp. Ex. 17). Addino also emailed Respondent's media relations department on October 15 to let them know that "this morning I had to send home both of my openers for not being in dress code (wearing the Starbucks Workers United shirt). They proceeded to record our interaction. My DM wanted me to loop you guys in as I know it may wind up on social

media...” (Resp. Ex. 18; Tr. 859). Addino did not receive any guidance from media relations and no corrective action was taken against DiMotta or Kurchak for recording Addino. (Tr. 859-860).

5 Addino consulted with partner relations regarding the Union t-shirt issue and ultimately issued documented coachings to both DiMotta and Kurchak.²¹ (GC Exs. 13 and 15). When she issued the corrective action to DiMotta, DiMotta refused to sign the discipline, asserted that Respondent’s conduct was illegal and that DiMotta would be filing an unfair labor practice regarding this matter. (Tr. 866). In her conversation with Kurchak, Addino presented the
10 corrective action form, Kurchak remarked that this was illegal and refused to sign the discipline form. (Tr. 867).

November 19, 2022

15 On the morning of November 19, 2022, DiMotta and Kurchak arrived for work wearing Union t-shirts. Addino let them know that they were out of compliance with the dress code and offered them the opportunity to go home, change their shirts, and finish out their shifts. Addino told DiMotta and Kurchak that if they refused to change their shirts, they would be sent home with predictability pay. (Tr. 877). Addino testified that DiMotta and Kurchak responded in a
20 “super aggressive” manner, waving their hands in Addino’s face. Addino asserts that they screamed at her and referenced Addino’s family. (Tr. 877). Towards the end of this conversation, DiMotta told Addino “keep this up and watch what happens.” Addino asked if this was a threat and then asked DiMotta and Kurchak to leave the store. (Tr. 877).

25 Later that day, Addino emailed district manager Christopher Martinez her summary of what transpired with DiMotta and Kurchak that morning. Addino wrote:

“Today I sent home Megan and Elizabeth for being out of dress code. During the conversation, Megan became very aggressive, yelling and waving her hand in my face
30 and recording me on her phone. She explained that it was illegal to send her home, along with telling me I manipulate my partners into thinking I’m their friend. She again asked why no one else comes around to tell them that the graphic tee is out of dress code, and demanded that if investigations happen, then Chris should be the one to come in and separate. Throughout this conversation, she proceeded to tell me “You grew up in a
35 union household, don’t ever say you are pro-union.” I’m unsure of how she knows my upbringing.²² Also some other things she mentioned is that we are always short staffed, and I explained I am hiring and getting partners trained. They also mentioned how I’m being given wrong information. I let them know I am following Starbucks Standards and Policies. She proceeded to tell me on her first write up that I lied and said we had a
40 conversation that we never had. However, we did have the conversation on 9/30/22, in camera’s view. Towards the end of the conversation, I said “okay, I sent you guys home now I’m asking you to leave.” She turns off her camera and says “Keep this up and watch what happens.” I said I’ll note that as a threat because now I’m feeling threatened.” She then turned back on her camera and said keep this up and we’ll keep

²¹ These two documented coachings were the only two disciplines issued for dress code infractions while Addino was the store manager at Caesar’s Bay. (Tr. 915).

²² DiMotta testified that Addino was not a stranger to the Caesar’s Bay store when she was hired as store manager – they had worked together for five years when Addino was a shift supervisor. (Tr. 378).

filing ULPs. I said okay, again I asked you to leave. Then they finally left.” (Resp. Ex. 21).

Later that same day, Casey Chen came to work out of dress code by wearing the Union t-shirt. Addino sent them home. (Tr. 878). Elisa Hung was also out of dress code because she was wearing white shoes to work. Addino testified that Hung had worked most of her shift in the white shoes and her shift was nearly over when she was sent home so Addino paid her for the remainder of her shift.²³ Addino explained that Hung was sent home for policy reasons – somebody pointed out to Addino that Hung was out of dress code and Addino had to hold Hung to the same standard as everybody else. (Tr. 878, 920-922).

Addino drafted corrective action forms for Casey Chen, Elisa Hung, Elizabeth Kurchak, and Megan DiMotta but she never finalized or issued these disciplines. In her testimony, Addino explained that Elisa Hung quit her job shortly after the November incident and that Addino never saw her again after November 19th. Addino could not recall why she never issued the corrective action form to Casey Chen and it is unclear from the record why proposed corrective action notices to DiMotta and Kurchak never issued. (Tr. 881-883).

General Counsel Evidence of Non-Compliant Dress Code Attire

Casey Chen testified that they have been wearing joggers²⁴ to work since 2020 despite the fact that joggers violate Respondent’s prohibition on athletic wear. (Tr. 135). Casey testified that in 2020, then-Caesar’s Bay store manager Robin Keechner spoke to Casey regarding the dress code in response to Casey wearing joggers at work. Despite Keechner’s admonition, Casey continued to wear joggers to work and was not disciplined for this infraction. (Tr. 135, 138-139). Casey also testified that Addino specifically told them not to wear certain pants to work and explained which pants comply with the dress code and which do not. (Tr. 171-172). Based on this conversation and their reading of the dress code, Casey understood that joggers violated the dress code. Casey, however, testified that they continued wearing joggers because the dress code was not often enforced. (Tr. 173). On November 19, 2022, when Addino chastised Casey for wearing the Union t-shirt, Casey was wearing joggers and was not spoken to about that specific dress code violation. To this day, Casey still wears joggers to work 3 times/week but has never been sent home for wearing them.²⁵ (Tr. 135-136).

Casey Chen offered additional evidence of partners flaunting Respondent’s dress code without consequence. They testified that barista Chris Hernandez wears a black t-shirt with black glossy Playboy bunny logos on the front, back, and sleeves of the t-shirt. Casey noted that they had worked with Chris for about two years, worked the same shift as Chris two or three times each week, and observed Chris wearing this Playboy shirt once a week. (Tr. 141-142).

²³ Addino clarified that she hadn’t noticed Hung’s shoes until one of the partners said something about the shoes. (Tr. 922).

²⁴ Joggers look like sweatpants and have a drawstring. (Tr. 179). Casey testified that they wear navy, brown, black, and blue joggers primarily made by three companies – Public Rec, ASOS, and Uniqlo. (Tr. 175).

²⁵ Current Caesar’s Bay store manager Jeremy Abril testified that Casey consistently shows up for work wearing sweatpants, which is not in compliance with Respondent’s dress code. But Abril confirmed that he has not issued Casey a documented coaching or written discipline for their dress code infractions. (Tr. 751, 759-760). Surprisingly, Serena Addino testified that she did not recall seeing Casey Chen wear joggers to work. (Tr. 941).

Jennifer DeJesus Sanchez²⁶, Megan DiMotta²⁷, and Elizabeth Kurchak all independently corroborated Casey Chen's testimony regarding Chris Hernandez wearing the Playboy shirt to work. (Tr. 208-210, 319-321, 415-417). Serena Addino testified that she worked with Chris Hernandez 3-4 shifts/week, but she never saw Hernandez wear a Playboy bunny shirt.²⁸ (Tr. 886, 928).

Casey Chen also testified that barista Jeffrey Chen²⁹ regularly wore a t-shirt covered with pictures of palm trees. Casey noted that Jeffrey Chen started wearing the palm tree shirt to work about two years ago, they wear the shirt once every few weeks, and continues to wear the palm tree shirt to work to this day. (Tr. 144-145). Megan DiMotta confirmed that Jeffrey Chen started wearing the palm tree shirt to work before employees unionized and that Jeffrey would wear this shirt to work either once a week or once every other week. DiMotta also noted that the last time she saw Jeffrey wear the palm tree shirt to work was in the spring of 2023. (Tr. 330-333). Serena Addino testified that Jeffrey Chen worked the closing shift and so she only occasionally worked with them. But Addino and Jeremy Abril both testified that they had not seen Jeffrey Chen out of dress code and/or had not seen a partner wear a shirt adorned with palm trees. (Tr. 752, 888).

Megan DiMotta and Elizabeth Kurchak testified that a barista named Calvin Young wore a white shirt with the "Supreme" logo across the chest in large, bold white letters with a black outer block. DiMotta testified that Calvin wore this shirt to work once a week starting before the filing of the representation petition, and that half of the Supreme logo is covered when Calvin wears his green apron. (Tr. 318, 324, 326, 415, 421). DiMotta also testified that Calvin separately wore a white anime shirt containing a large graphic spanning the length of the shirt and that the graphic involved a man holding a sword in front of a castle. DiMotta testified that Calvin started wearing the anime shirt to work after the representation election and he wore this shirt to work about once every two weeks. (Tr. 324, 327-329). Serena Addino testified that she never saw Calvin Young out of compliance with Respondent's dress code and Jeremy Abril testified that he had not seen a partner wear a shirt featuring the word "Supreme." (Tr. 752, 889).

Jennifer DeJesus Sanchez testified that once a week, her co-worker Timmy Yu wears a t-shirt at work bearing the name and logo for the K-Pop³⁰ group Twice. (Tr. 213-214). DeJesus Sanchez also testified that the words on the t-shirt are covered by Timmy's green apron and that even though Timmy mostly works the night shift, he occasionally works mornings, where it is more likely that managers will see the t-shirt. (Tr. 230-232). Jeremy Abril testified that he has not seen a partner wear a shirt with the word Twice on it and Serena Addino testified that she never saw Timmy Yu out of dress code. (Tr. 752, 887).

Casey Chen also testified that in the past two years, barista Ruby Sesa has worn t-shirts celebrating musical groups with large colorful logos on both the front and back of the shirts. (Tr. 139, 141). Casey offered that the green apron covered most of the graphic on the front of the shirt, but the graphic on the back of the shirt was clearly visible. (Tr. 140). Serena Addino testified that she only worked with Ruby Sesa once or twice and that she never saw Ruby out of

²⁶ DeJesus Sanchez specifically recalled being present for a conversation between Hernandez and Addino where Addino told him that the Playboy bunny shirt was not something he should be wearing at work. (Tr. 211-212).

²⁷ DiMotta specifically testified that Chris started wearing this shirt before the representation petition was filed and that DiMotta has seen Chris wear the Playboy t-shirt while Serena Addino was working in the store. (Tr. 320).

²⁸ Similarly, Jeremy Abril testified that he has not seen a partner wear a Playboy Bunny shirt to work at the Caesar's Bay store. (Tr. 752).

²⁹ Casey Chen and Jeffrey Chen are not related. (Tr. 165-166).

³⁰ "K-Pop" refers to popular music from South Korea.

dress code. Similarly, Jeremy Abril testified that he has not seen a partner wear band or concert t-shirts. (Tr. 752, 888).

Finally, many of the General Counsel's witnesses testified that Serena Addino herself was consistently in violation of Respondent's dress code. In this regard, Casey Chen testified that Serena Addino wore joggers or sweatpants to work a few times each week. (Tr. 146-147). Jennifer DeJesus Sanchez testified that Addino regularly wore leggings and long sleeves to work and did not wear a hairnet or hair tie while working at the coffee bar. (Tr. 215, 254). Megan DiMotta testified that Serena Addino would regularly wear a long cardigan sweater with long flowy sleeves. Additionally, Addino worked at the coffee bar without an apron and without a hat or hairnet. DiMotta estimated that she saw Addino wear these cardigans with long flowy sleeves 2-3 times/week, even during the summer months. (Tr. 335-336). DiMotta also testified that she observed Addino wearing leggings to work about one time per week. (Tr. 338-339). Finally, Elizabeth Kurchak testified that she observed Addino wearing leggings, white sneakers, cardigans with long sleeves, and hoodies while preparing food and beverages at the Caesar's Bay store. (Tr. 423-424).³¹ Serena Addino confirmed that on certain occasions, she worked out of dress code. But Addino offered that those occasions were limited to emergencies where a shift supervisor called out at the last minute or there was nobody available to open or close a store. On those occasions, Addino was not expecting to come in to work and she wore active wear, leggings, sweatshirts and hoodies. (Tr. 897-898, 930-932). Addino also confirmed that although Respondent's policy required partners to wear a hat and hairnet while working on the floor, she did not always comply with this policy. Addino testified that she wore a hat, but not a hairnet, yet had no explanation for this decision. (Tr. 898-899).

Constance Lange testified that Respondent's dress code exists in part for partner safety and to comply with federal and local health code regulations. Lange opined that flowy clothing with huge sleeves would generally be inappropriate for food service, remarking that partners are working around hot equipment with handles and are working near each other. If a garment has sleeves hanging down, the sleeves could get caught on something or fall into food if you start reaching down. (Tr. 559, 580). Lange also confirmed that leggings worn by themselves, white sneakers, and athletic clothing are not permitted under Respondent's dress code. (Tr. 582-583).

Respondent Comparator Evidence

Respondent offered a number of corrective action forms into evidence ostensibly to show a pattern and practice of dress code enforcement throughout the Brooklyn district home to the Caesar's Bay store. Only one of the corrective action forms, however, came from Caesar's Bay. In April 2021, previous store manager Robin Keehner issued barista Chi Thang a documented coaching for failure to comply with Respondent's dress code. The three infractions listed in this discipline form are having holes in his jeans, wearing a red t-shirt with graphics on the back, and wearing his hat backwards. (Resp. Ex. 16, Bates Stamp 01402).

The remaining comparator disciplines came from a series of Starbucks stores that either were or are now in the same district as Caesar's Bay. On March 20, 2021, at the Industry City

³¹ Respondent's Partner Resources Manual indicates that "district managers, field leaders and other support partners who will be working in a store must be in dress code to perform tasks that involve food/beverage handling or are customer facing..." (Resp. Ex. 8, Bates Stamp 00651). And current Caesar's Bay store manager Jeremy Abril testified that "if I was a barista and my manager wasn't in dress code, there's no reason I would want to be in dress code." (Tr. 748).

store, Respondent issued barista Riley McCarthy a documented coaching for three specific offenses, only one of which related to the dress code (wearing a hooded sweater). (Resp. Ex. 16, Bates Stamp 01501). At the Cropsey Avenue store in April 2021, Respondent terminated barista Alyssa Pinzon for a panoply of infractions (e.g. no-call no-show, tardiness), only one of which related to the dress code – repeated use of nail polish. (Resp. Ex. 16, Bates Stamp 01674). At Respondent’s Industry City store in April 2022, Respondent issued a final written warning to barista Fredo Rodriguez for using vulgar language directed at another partner and for reporting to work wearing sweatpants. (Resp. Ex. 16, Bates Stamp 01499). At its Nostrand and Gravesend store in late December 2022, Respondent issued partner Grace Joh a documented coaching for wearing crocs with holes in them (violating federal food safety guidelines) and for wearing a non-Starbucks graphic tee and sweater.³² (Resp. Ex. 16, Bates Stamp 00637).

Analysis

Respondent Violated Section 8(a)(1) of the Act by Maintaining an Overly Broad and Discriminatory Dress Code Policy Prohibiting Logos, Writings, or Graphics– Complaint § 6

Section 7 of the Act guarantees employees “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” 29 U.S.C. § 157.

In *Republic Aviation Corp. v. NLRB*, the Supreme Court affirmed that “the right of employees to wear union insignia at work has long been recognized as a reasonable and legitimate form of union activity, and the [employer’s] curtailment of that right is clearly violative of the Act.” 324 U.S. 793, 802-803 & fn. 7 (1945). The Supreme Court went on to say that the Board must balance “the undisputed right of self-organization assumed to employees under the Act and the equally undisputed right of employers to maintain discipline in their establishments.” *Id.* at 797-798. *Republic Aviation* established the Board’s longstanding approach to balancing these rights: a presumption that any employer limitation on the display of union insignia is invalid, with the burden on the employer to establish special circumstances to justify its action. *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 6 (2022).³³

The Board has treated clothes displaying union insignia the same as union insignia that employees attach to their clothing, such as buttons and pins. *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 7; *Great Plains Coca-Cola Bottling Co.*, 311 NLRB 509, 515 (1993). Thus, Section 7’s protection of employees’ right to display union insignia “extends to prounion T-shirts,” and the Board will find that an employer’s interference in any way with such a display of union insignia violates the Act unless the employer proves special circumstances that outweigh the employees’ right to wear the insignia and that its prohibition is narrowly tailored to address those

³² There was no specific testimony regarding this incident and the corrective action form does not specify if the graphic tee in question was the Union t-shirt or something else.

³³ In its post-hearing brief, Respondent argues that I should disregard the Board’s 2022 *Tesla* decision because the Fifth Circuit recently denied enforcement of that decision. *Tesla, Inc. v. NLRB*, 2023 WL 7528878 (5th Cir. 2023). It is well settled, however, that the Board generally adheres to a “nonacquiescence policy” with respect to appellate court decisions that conflict with Board law. This policy instructs administrative law judges to follow Board precedent, not court of appeals precedent, unless overruled by the United States Supreme Court. See *D.L. Baker, Inc.*, 351 NLRB 515, fn. 42 (2007). Thus, I am compelled to adhere to the Board’s *Tesla* decision as binding precedent in this case.

circumstances. *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 7, 17; *Wal-Mart Stores*, 340 NLRB 637, 638 (2003), enfd. in relevant part 400 F.3d 1093 (8th Cir. 2005). The Board has required an employer to establish special circumstances to justify restrictions on employees' right to display union insignia, even if the employer permitted employees to display union insignia in other ways. *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 10; *Caterpillar, Inc.*, 321 NLRB 1178, 1180-1181 & fn. 10 (1996).³⁴

Furthermore, employers may lawfully maintain facially neutral, nondiscriminatory dress codes and uniform policies that implicitly limit or restrict the display of union insignia, so long as they are narrowly tailored to serve a legitimate interest that outweighs the adverse effect on employees' Section 7 rights. *Tesla, Inc.*, 371 NLRB No. 131, slip op. at 8, fn. 21. But mere employee contact with customers does not, standing alone, justify an employer prohibiting the wearing of union buttons or insignia. *Floridian Hotel of Tampa, Inc.*, 137 NLRB 1484 (1962). And a uniform requirement alone is not a special circumstance justifying a union insignia prohibition. *Long Beach Memorial Medical Center, Inc.*, 366 NLRB No. 66, slip op. at 3 (2018); *P.S.K. Supermarkets*, 349 NLRB 34, 35, (2007). Furthermore, it is irrelevant that an employer permits employees to wear other union insignia that it deems acceptable. *Holladay Park Hospital*, 262 NLRB 278, 279 (1982).

Special circumstances may include "situations where display of...insignia might 'jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, as part of its business plan, through appearance rules for its employees.'" *Home Depot USA*, 373 NLRB No. 25, slip op. at 11 (2024) (quoting *Bell-Atlantic-Pennsylvania*, 339 NLRB 1084, 1086 (2003)). To establish a special circumstances defense, an employer must show that its interest in banning a particular insignia outweighs the employee's Section 7 right to wear it. *Home Depot USA*, 373 NLRB No. 25, slip op. at 11. To establish that protected insignia interfere with an employer's public image, the employer must establish a carefully cultivated public image that is so consistently preserved that the nonconforming symbol, button, or other insignia would jeopardize the image. *Id.* Although it is possible that an employer's desire to remain neutral on a controversial political issue could establish special circumstances sufficient to justify a restriction on union insignia, such a claim would have to first be substantiated by the record. *Id.* at 12; *AT&T*, 362 NLRB 885, 889 (2015). An employer cannot meet its special circumstances burden simply by showing that some employees disagree with a particular message. *Home Depot USA*, 373 NLRB No. 25, slip op. at 13.

Respondent's dress code rule restricting logos, writings, and graphics is facially neutral, but its implicit limit on the display of Union t-shirts fails to satisfy *Tesla's* requirement that special circumstances outweigh the employer's interference with its employees' protected right to wear union insignia. In this regard, Respondent posits that its signature green apron is the focal point of its dress code and therefore, any logos, writings, or graphics worn by partners would distract customers and interfere with its brand messaging. Under current Board law, however, Respondent's contention fails to establish the special circumstances necessary to infringe on employees' Section 7 rights. The Board's recent *Home Depot USA* decision (373 NLRB No. 25, slip op. at 11 (2024)) is directly on point. In *Home Depot*, the employer argued that its iconic orange apron and the public image cultivated by this trademarked apron justified

³⁴ Employees' presumptive right to display union insignia is not limited to nonworking time or nonwork areas because unlike union solicitation or distribution, the display of union insignia does not pose a general risk to production. *Tesla, Inc.*, 371 NLRB No. 131 slip op. at 11, fn. 26.

the employer's restriction on Black Lives Matter insignia. The Board rejected this argument, asserting that the employer's encouragement of employees to extensively personalize their aprons with Pride and holiday symbols, Pan-African flag colors, and insignia and slogans of professional or college sports teams signaled the downfall of the employer's public image argument. The Board cited to *In-N-Out Burger*, 894 F.3d 707, 717 (5th Cir. 2018) for the proposition that if the employee uniform changes several times each year, then either the company's interest in maintaining a 'consistent' public image is not as great as it suggests, or, alternatively, the uniform does not play as critical a role in maintaining that public image as the employer claims.

In this case, the record evidence reveals that Respondent's official dress code rule prohibiting logos, graphics, and writings competes with a series of exceptions that undermines Respondent's public image defense. Like in *Home Depot*, Respondent's partners are encouraged to wear t-shirts supporting Respondent's partner networks that promote respect for refugees (with no reference to Respondent anywhere on the shirt), Pride, Black Lives Matter, and other groups that promote diversity and inclusion. Then during Halloween, partners are permitted to wear costumes to work, so long as they comply with health and safety regulations. Similarly, in December, festive Christmas-wear is sanctioned as dress code compliant. And other spirit-oriented events like military appreciation embroidery adorning partners' aprons and wearing local sports paraphernalia in support of playoff drives serve to further minimize Respondent's green apron as the focus of Respondent's brand. Based on these exceptions, I find that Respondent has failed to establish the special circumstances necessary to limit or restrict the display of union t-shirts. Thus, Respondent's dress code rule prohibiting logos, writings, and graphics violates Section 8(a)(1) of the Act.

Respondent Did Not Promulgate and Maintain a New Rule in Late September 2022 Prohibiting Employees from Displaying Clothing With "Graphics, Typography, or Large Logos" – Complaint § 7

Counsel for the General Counsel alleges that Respondent repromulgated its unlawful graphics dress code rule in late September 2022 in violation of Section 8(a)(1) of the Act. I disagree. The Board has held that statements from a supervisor to employees do not rise to the level of an unlawful oral promulgation of a rule when the comments could not be reasonably construed as establishing a new rule or policy for all employees. See *American Federation of Teachers New Mexico, AFL-CIO*, 360 NLRB 438, fn. 3 (2014); *Shamrock Foods Co.*, 369 NLRB No. 5, slip op. at 4 (2020). In our case, Serena Addino reviewed Respondent's dress code policies with all store partners in late September 2022 – the same dress code policy that had been continuously posted in the breakroom. When certain employees questioned the need to sign to acknowledge the policy, Addino confirmed that the language in Respondent's dress code policy had not changed. Thus, the record evidence is clear that Respondent did not establish or promulgate a new dress code rule or policy in late September 2022 nor is there probative record evidence showing that employees understood existing dress code rules had been changed. Therefore, I recommend dismissal of paragraph 7 of the complaint.

There is Insufficient Evidence to Establish That Respondent Promulgated or Maintained Its Graphics Dress Code Rule to Discourage Employees from Forming, Joining, or Assisting the Union – Complaint § 8

Setting aside the fact that Respondent did not promulgate a new graphics dress code rule in late September 2022, the record evidence fails to establish that Serena Addino reminded employees of this rule to discourage employees from engaging in Union or other concerted activities. In this regard, employees petitioned for an election in February 2022 and the Board certified the Union as the Caesars Bay employees' exclusive collective bargaining representative in May 2022. Employee testimony revealed that during and after the election campaign, employees wore the Union t-shirt to work without incident.

About four months after balloting concluded, Serena Addino took over as the Caesar's Bay store manager. In her first 30 days on the job, Addino reviewed a number of Respondent's policies with her store partners, including the one-page dress code. It is this resetting of expectations that triggered the pleading in complaint paragraph 8. But Counsel for the General Counsel has failed to link Addino's selection as store manager or the timing of her policy reviews to the employees' selection of the Union as their collective bargaining representative. No evidence has been adduced showing that Addino was appointed store manager to penalize employees for bringing in the Union or that her level setting of expectations was initiated in response to Union activities. Based on the above, I recommend dismissal of complaint paragraph 8.

Respondent Selectively and Disparately Enforced Its Graphics Dress Code Rule by Prohibiting Employees from Wearing Union T-Shirts While Permitting Employees to Wear Other Clothing Violative of Its Dress Code Rules – Complaint § 9(a)

In October and November 2022, Respondent cracked down on partners who wore the Union t-shirt to work. Addino ordered these partners to either go home and change, or simply go home. But copious credible witness testimony confirms that at this same time, Respondent turned a blind eye to other dress code infractions. Thus, Respondent violated the Act as alleged.

Casey Chen credibly testified that they have worn joggers to work, without consequence, for the past three years, in contravention of Respondent's dress code. Three different managers have admonished Chen for wearing this athletic apparel, but Chen continues to wear these pants to work, has never received a formal write-up (e.g. documented coaching), and has never been sent home early because they wore joggers. Chen's testimony was detailed and confident, providing the brand and color for each of the joggers they wore to work. In Respondent's post-hearing brief (page 21, fn. 11), it found inexplicable Chen's admission that they continued wearing joggers to work after being told that joggers did not comply with the dress code. I disagree. It is readily apparent that Chen continued to wear joggers to work because Respondent never disciplined them for the infraction and Chen observed their manager repeatedly flouting the dress code rules. As current Caesar's Bay manager Jeremy Abril sagely surmised: "if I was a barista and my manager wasn't in dress code, there's no reason I would want to be in dress code." What is inexplicable, however, was Serena Addino's inability to recall seeing Casey Chen wear joggers at work considering Chen's admission that they wore joggers to work three times/week, including on the day when Addino sent them home for wearing the Union t-shirt.

Additional evidence supports the conclusion that Respondent selectively and disparately enforced its dress code rules. Four employee witnesses independently testified that barista Chris Hernandez regularly wore a black t-shirt adorned with glossy Playboy bunny logos on the front, back, and sleeves of the shirt. Casey Chen, Jennifer DeJesus Sanchez, Megan DiMotta, and Elizabeth Kurchak all described Hernandez's shirt in specific detail. But despite working with Hernandez 3-4 shifts/week, Addino testified that she never saw him wear a Playboy bunny shirt. In assessing the demeanor, tone, and content of the above witnesses' testimony, I specifically credit the four employee witnesses over Addino. In this regard, Addino's recall essentially consisted of facts supportive of Respondent's case while professing an inability to recall much of anything else. This selective recall reflects a lack of candor. In contrast, Chen, DiMotta, and Kurchak all willingly acknowledged their missteps on cross-examination (e.g. Chen wearing joggers even though they are prohibited; DiMotta was upset by Addino's actions) while offering genuine, strong, and detailed testimony.

Furthermore, Casey Chen and Megan DiMotta credibly testified that barista Jeffrey Chen regularly wore a shirt covered with palm trees, and DiMotta and Kurchak testified that a barista named Calvin Young wore a white shirt to work with the word "Supreme" written across the front of the shirt in large, bold white letters with a black outer block. Although Serena Addino testified that she never saw Jeffrey Chen and Calvin Young out of dress code, I specifically credit Casey Chen, Megan DiMotta, and Elizabeth Kurchak's testimony over Serena Addino's blanket denial.

But stronger evidence of the selective and disparate enforcement of Respondent's dress code lies in Addino's own behavior. Casey Chen testified that Addino wore sweatpants to work several times a week while Jennifer DeJesus Sanchez testified that Addino regularly wore leggings and long sleeves to work. And Megan DiMotta and Elizabeth Kurchak testified that Addino regularly wore a cardigan sweater with long flowy sleeves, even during the summer months. Each of the above items violates Respondent's dress code based on aesthetics or food safety reasons. Although Addino attempted to minimize the significance of her dress code faux pas by attributing them to coming to work at unscheduled times in response to staffing emergencies, the credited employee testimony makes clear that Addino's flouting of Respondent's dress code was a recurring matter, not an infrequent offense. And while Addino tried to downplay her wearing of sweatpants and hoodies, she ignored the allegation that she regularly wore clothes with long, flowy sleeves that violated food safety protocols.³⁵ Based on the above, I find that Respondent has violated the Act by selectively and disparately enforcing its dress code rules to prohibit the wearing of the Union t-shirt, while permitting other apparel out of step with Respondent's dress code.

Respondent More Strictly Enforced Its Dress Code Rules to Discourage Employees from Engaging in Union and Other Protected Activities – Complaint § 9(b)

Although I found *infra* that Respondent did not promulgate a new dress code rule, copious record evidence reveals that starting in October 2022, Respondent more strictly enforced its dress code rules at the Caesar's Bay store to target the Union t-shirt. In this regard, prior to

³⁵ Even more troubling was unrebutted credible witness testimony from Casey Chen and Elizabeth Kurchak that on November 19, 2022, when Addino sent Kurchak and Chen home early for wearing the Union t-shirt, Addino permitted a partner from another store to continue working even though the partner was out of dress code (regarding their footwear). Shockingly, Addino allowed this unnamed partner to continue working, assertedly because Respondent's dress code did not apply to partners assisting from other stores.

October 2022, Respondent did not send a single Caesar's Bay partner home early for any dress code infraction. Respondent tolerated Playboy bunny and palm tree shirts, joggers, and even Union t-shirts. And the only record evidence showing that Respondent disciplined any Caesar's Bay partner for a dress code infraction prior to October 2022 consists of a solitary documented coaching from April 2021. On this corrective action form, previous Caesar's Bay manager Robin Keehner disciplined Chi Thang only after Thang committed a third dress code infraction – and only one out of the three infractions involved a t-shirt with graphics.

Although Respondent presented several other corrective action forms spanning the Brooklyn district(s) belonging to Caesar's Bay, those documents reveal that no partner received written discipline for a lone dress code infraction (graphic t-shirt or otherwise). For example, Riley McCarthy received a documented coaching only after committing three specific offenses, one of which related to the dress code (wearing a hoodie). And Fredo Rodriguez received a final written warning for using vulgar language towards a co-worker and for wearing sweatpants.

Thus, it is jarring that only Caesar's Bay partners were sent home early for non-compliance with the dress code, e.g. wearing Union t-shirts, and only Caesar's Bay partners received documented coachings as a result of a single dress code infraction. Moreover, when the crackdown on Union t-shirts began in October 2022, other dress code infractions continued to be ignored. To this end, the Playboy bunny and palm tree shirts continued to be worn without pushback, as did the joggers. The only logical conclusion to draw from these facts is the message on the Union t-shirt raised Respondent's ire and its stricter enforcement of the dress code sought to discourage union and other protected activities taking place at the Caesar's Bay store. It is unlawful for an employer to enforce rules more strictly in response to union activity. And the General Counsel has demonstrated that the pattern of discipline here deviated from the pattern of discipline prior to the initiation of union activities at Caesar's Bay. Since Respondent has failed to show that the decisions to send partners home early and issue them documented coachings for wearing the Union t-shirt were motivated by considerations unrelated to employees' union activities, Respondent has violated Section 8(a)(1) and (3) of the Act. See *Shamrock Foods Co.*, 366 NLRB No. 107 (2018); *Kitsap Tenant Support Services*, 366 NLRB No. 98 (2018).

Respondent Sent Megan DiMotta and Elizabeth Kurchak Home Early on October 15, 2022 and Issued Them Documented Coachings Because They Wore Union T-Shirts – Complaint § 10 through 12

On October 15, 2022, Megan DiMotta and Elizabeth Kurchak arrived for their shifts wearing Union t-shirts. Store manager Serena Addino spotted them, told them to change out of the Union t-shirts and sent them home when DiMotta and Kurchak refused to change their shirts. Addino then told them that they would be disciplined for wearing the Union t-shirts. The following week, Addino issued DiMotta and Kurchak documented coachings, specifying that wearing the "graphic" t-shirt was the only infraction. By sending DiMotta and Kurchak home early and disciplining them for wearing the Union t-shirt, Respondent violated the Act.

Wright Line, 251 NLRB 1083 (1980), is a causation test used to analyze the legality of discipline in mixed motive cases. *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 7 (2019), quoting *Wright Line*, 251 NLRB at 1089 ("[The Board's] task in resolving cases alleging violations which turn on motivation is to determine whether a causal relationship existed between employees engaging in union or other protected activities and actions on the part of

their employer which detrimentally affect such employees' employment"). *Wright Line*, however, is not applicable where an employer does not assert a basis for disciplining an employee other than conduct which is determined to be protected under Section 7 of the Act. See *The Ohio Bell Telephone Co.*, 370 NLRB No. 29 (2020); *Matsu Sushi Restaurant*, 368 NLRB No. 16, slip op. at 1, fn. 2 (2019); *Saia Motor Freight Line, Inc.*, 333 NLRB 784, 785 (2001). In this case, the recording of Addino and DiMotta's conversation on October 15, 2022, as well as Addino, DiMotta, and Kurchak's testimony, makes clear that Respondent sent DiMotta and Kurchak home, and issuing them a documented coaching, only because they wore the Union t-shirt. This fact is reinforced through the written disciplines, which cited the Union (graphic) t-shirt as the only basis for the discipline. As noted above, *Republic Aviation* and *Tesla* affirm that displaying union insignia on clothing is activity protected by Section 7 of the Act. Because Respondent has failed to establish special circumstances justifying the restriction on this activity, Respondent's graphics/logo/writings rule is unlawful, and Respondent sending Kurchak and DiMotta home and issuing them documented coachings in furtherance of this unlawful rule similarly violates Sections 8(a)(1) and (3) of the Act.³⁶

Respondent Violated the Act by Sending Jennifer DeJesus Sanchez Home Early on October 24, 2022 Because She Wore a Union T-Shirt to Work (Complaint § 13b)

On the morning of October 24, 2022, Jennifer DeJesus Sanchez arrived for work wearing the Union t-shirt. Shift supervisor Tania Vasquez reported this fact to Addino via text. When Vasquez told Addino that DeJesus Sanchez was wearing "the union shirt," Addino replied via text that DeJesus Sanchez needed to change her shirt or she would be sent home and paid for loss of hours. DeJesus Sanchez opted to go home and received \$75 in predictability pay pursuant to New York City regulations. It is undisputed that the sole reason DeJesus Sanchez was sent home was because she was wearing "the Union shirt." As noted above, this conduct violates Sections 8(a)(1) and (3) of the Act.³⁷

Respondent Violated the Act by Sending Megan DiMotta, Elizabeth Kurchak, and Casey Chen Home Early on November 19, 2022 Because They Wore Union T-Shirts to Work (Complaint § 13a, c, and e)

On the morning of November 19, 2022, Elizabeth Kurchak, Megan DiMotta, and Casey Chen purposely wore Union t-shirts to work to concertedly protest the termination of a co-worker. Addino directed all three partners to leave the store if they were not willing to change out of the Union t-shirt. When they refused to change clothes, Addino reminded them that she was simply enforcing Respondent's dress code policies concerning graphics and reiterated that

³⁶ Even if *Wright Line* is applied here, the evidence still points to a violation of Sections 8(a)(1) and (3). To this end, Counsel for the General Counsel has established that DiMotta and Kurchak were engaged in protected activity, Respondent was aware of that activity, and Respondent demonstrated animus towards this activity by disparately and selectively enforcing its dress code policies to single out employees wearing Union t-shirts for dress code infractions while turning a blind eye to non-Union related dress code transgressions. Having met its initial *Wright Line* burden, the burden shifts to Respondent to establish that it would have sent DiMotta and Kurchak home, and issued them documented coachings, in the absence of their protected activities. But since the sole reason to send these employees home, and issue write-ups, was the act of wearing Union t-shirts to work, Respondent cannot meet its burden. Therefore, even under the *Wright Line* framework, Counsel for the General Counsel has proven a violation of Sections 8(a)(1) and (3) of the Act.

³⁷ Even if I credit Addino's wildly speculative testimony that DeJesus Sanchez was not actually wearing the Union t-shirt that morning, the resulting violation of the Act remains the same. To this end, if DeJesus Sanchez conspired with Vasquez to allow DeJesus Sanchez to get out of work that morning, the truth remains that the only reason Addino directed Vasquez to send DeJesus Sanchez home was because of the report of the Union t-shirt.

they could not work their scheduled shifts that day. Given that the directive to leave the store was based only on the partners wearing t-shirts that I have determined constituted protected activity under *Republic Aviation* and *Tesla*, I similarly find the act of sending DiMotta³⁸, Kurchak, and Chen home early violates Sections 8(a)(1) and (3) of the Act.

Several issues that arose on November 19th require special attention here. First, Addino's hyperfocus on the Union t-shirts is particularly galling considering that Casey Chen was also wearing joggers on this day, but Addino did not mention this infraction when she escorted Chen out of the store. Next, as Chen was leaving, they pointed out a partner who was wearing brightly colored shoes in violation of Respondent's dress code. Surprisingly, Addino declared this infraction to be excusable simply because this partner was assisting from another store. Lastly, when Elisa Hung was sent home for wearing white shoes (to be addressed in more detail below), she was wearing a Starbucks BLM t-shirt. As Constance Lange testified, this shirt does not actually comply with Respondent's dress code, but given the enormity of the moment, Respondent carved out an exception. Thus, these three details strongly suggest that Addino and Respondent were more concerned with the messaging on the Union t-shirt than with strict compliance with Respondent's dress code.

Respondent Violated the Act by Sending Elisa Hung Home Early on November 19 to Lend an Air of Legitimacy to Its Unlawful Actions Against the Partners Wearing the Union T-Shirts (Complaint § 13d)

The analysis relating to Elisa Hung is slightly different than the analysis concerning her colleagues because Hung was not wearing a Union t-shirt when Addino directed her to go home early on November 19, 2022. Instead, Addino dismissed Hung early because she was wearing white shoes. Although the act of wearing white shoes is not protected like the display of union insignia, the record evidence demonstrates that Addino only sent Hung home on November 19 to legitimize Respondent's unlawful directive concerning the Union t-shirts. Thus, Respondent's actions against Elisa Hung violated the Act.

The Board has consistently held that employers violate the Act by discharging, laying off, or otherwise discriminating against an employee who was not engaged in union or other protected activity to lend an "aura of legitimacy" to a discriminatory act targeted at other employees engaged in protected activities. See *Cayuga Medical Center at Ithaca*, 367 NLRB No. 21, slip op. at 33 (2018); *Pillsbury Chemical Co.*, 317 NLRB 261, 261 (1995). And that is precisely what happened here. On November 19, 2022, Serena Addino was escorting Casey Chen out of the Caesar's Bay store because they were wearing a Union t-shirt. As they were leaving, Chen pointed out other partners out of compliance with Respondent's dress code. To this end, Chen noted that Elisa Hung was wearing white shoes. Hung credibly testified that she had worn these same shoes to work at least a couple of times prior to November 19th and that no manager had previously informed her that these shoes failed to comply with Respondent's dress code. (Tr. 282). Furthermore, Hung had worked her entire shift on November 19th save for the last 15 minutes before she was told that she was out of uniform.³⁹ And instead of letting Hung

³⁸ Addino immediately reported to her district manager that DiMotta was very aggressive that morning, and that Addino perceived DiMotta's "watch what happens" comment to be a threat. But Respondent did not discipline DiMotta for any statements or behaviors she may have engaged in that morning and the record is clear that the sole reason why Addino sent DiMotta and the others home that morning was because they were wearing Union t-shirts.

³⁹ To the extent Hung's testimony conflicts with Addino's, I credit Hung. While her testimony was brief, Hung

work the remaining 15 minutes, Addino directed her to go home and informed Hung that she would be paid for the entire shift. Although Addino attributed her decision to sending Hung home early to holding all partners to the same dress code standard, I do not find this explanation to be credible, especially because Addino permitted a partner from a different store to work their entire shift on November 19th in footwear out of compliance with Respondent's dress code. The more likely driver of Addino's decision to send Hung home early was the desire to try to legitimize the unlawful actions directed at Chen, DiMotta, and Kurchak. Therefore, I find that Respondent violated Section 8(a)(1) and (3) of the Act when it sent Elisa Hung home early on November 19, 2022.

Conclusions of Law

1. The Respondent, Starbucks Corp. is an employer within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Charging Party, Workers United, affiliated with Service Employees International Union, is a labor organization within the meaning of Section 2(5) of the Act.
3. By engaging in the following acts and conduct, Respondent has violated Section 8(a)(1) of the Act:
 - a. Maintaining an unlawful dress code rule restricting logos, graphics, and writings;
 - b. Selectively and disparately enforcing the logos, graphics, and writings dress code rule to restrict the display of Union t-shirts while permitting other violations of the dress code rule;
 - c. More strictly enforcing the logos, graphics, and writings dress code rule to restrict the display of Union t-shirts while permitting other violations of the dress code rule.
 - d. Sending employees home early because of their protected activity of wearing the Union t-shirt.
 - e. Sending Elisa Hung home early to legitimize Respondent's discrimination against other employees referenced above in 3(d).
 - f. Issuing documented coachings to employees because of their protected activity of wearing the Union t-shirt.
4. By engaging in the following acts and conduct, Respondent has violated Section 8(a)(3) of the Act:

did not embellish any details and testified in a calm, consistent manner, especially on cross-examination. In contrast, Addino's explanation for why she sent Hung home with only 15 minutes left in her shift strains credulity, especially considering she permitted a partner from another store to work that day despite their footwear also being out of compliance with Respondent's dress code.

- a. Selectively and disparately enforcing the logos, graphics, and writings dress code rule to restrict the display of Union t-shirts while permitting other violations of the dress code rule;
- b. More strictly enforcing the logos, graphics, and writings dress code rule to restrict the display of Union t-shirts while permitting other violations of the dress code rule.
- c. Sending employees home early because of their support for the Union and/or to discourage support for the Union.
- d. Sending Elisa Hung home early to legitimize Respondent's discrimination against other employees referenced above in 4(d).
- e. Issuing documented coachings to employees because of their support for the Union and/or to discourage support for the Union.

5. All other allegations of the complaint are dismissed.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.⁴⁰

I order Respondent to post a notice at the Caesar's Bay store in the usual manner, and in accordance with *Starbucks Corp.*, 372 NLRB No. 122, slip op. at 5 (2023), 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.

I also order Respondent to rescind the documented coachings issued to Megan DiMotta and Elizabeth Kurchak and notify these employees in writing that this has been done and that these disciplines will not be used against them in any way.

Respondent must also make Megan DiMotta, Elizabeth Kurchak, Casey Chen, and Jennifer DeJesus Sanchez whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay 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).

⁴⁰ In its post-hearing brief (pages 54-56), Respondent asserts that the trial proceeding in this case is unconstitutional for two reasons: 1) the NLRB's structure only permits the President to remove Board members for neglect of duty or malfeasance; 2) ALJs have three layers of removal protection in violation of Article II of the Constitution. I deny each of Respondent's constitutional challenges with the understanding that a federal court may address these issues at some point in the future. See *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1-2 (2023); *National Association of Broadcast Employees & Technicians, Local 51 (NABET)*, 370 NLRB No. 114, slip op. at 1-2 (2021).

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), Respondent shall compensate Megan DiMotta, Elizabeth Kurchak, Casey Chen, and Jennifer DeJesus Sanchez for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), 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 29 a report allocating backpay to the appropriate calendar year(s) for each of the four employees.

In addition, in accordance with *Containerboard Packaging-Niagara*, 370 NLRB No. 76, as modified in 371 NLRB No. 25 (2021), Respondent is ordered to file, with the Regional Director for Region 29, a copy of the W-2 form reflecting the backpay award for each of the four employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴¹

Order

Respondent, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining its unlawful dress code rule regarding the display of logos, writings, and graphics.

(b) Selectively and disparately enforcing its unlawful dress code rule to restrict the wearing of Union t-shirts while permitting the display of other logos, writings, and graphics.

(c) More strictly enforcing its unlawful dress code rule to restrict the wearing of Union t-shirts while permitting the display of other logos, writings, and graphics.

(d) Sending employees home before the conclusion of their shifts for wearing Union t-shirts.

(e) Sending employees home before the conclusion of their shifts to legitimize otherwise discriminatory conduct directed at employees engaged in protected activities.

(f) Disciplining employees for wearing Union t-shirts.

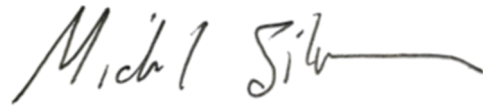
(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

⁴¹ 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.

- (a) Rescind the logos, writings, and graphics rule or revise this dress code rule to make clear that it does not prohibit partners from wearing Union t-shirts.
- 5 (b) Notify all current employees that the logos, writings, and graphics rule has been rescinded, or if it has been revised, provide them with a copy of the dress code with the revised logos, writings, and graphics rule.
- 10 (c) Post at its Caesar's Bay, Brooklyn, New York facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, 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. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent 15 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 any time since September 1, 2022.
- 20 (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful documented coachings received by Megan DiMotta and Elizabeth Kurchak and within 3 days thereafter, notify the employees in writing that this has been done and that these disciplines will not be used against them in any way.
- 25 (e) Make Megan DiMotta, Elizabeth Kurchak, Casey Chen, and Jennifer DeJesus Sanchez whole for any loss of earnings and other benefits, if any, for being sent home early from work in October and November 2022.
- 30 (f) Compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.
- 35 (g) File with the Regional Director for Region 29, 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 each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.
- 40 (h) Within 21 days after service by the Region, file with the Regional Director for Region 29 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.
- 45

Dated, Washington, D.C. June 5, 2024

A handwritten signature in dark ink, reading "Michael Silverstein" in a cursive script. The signature is written on a light background.

Michael P. Silverstein
Administrative Law Judge

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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT maintain overly broad dress code rules that prohibit our partners from wearing Union t-shirts.

WE WILL NOT more strictly enforce our dress code rules in response to union or other protected, concerted activities.

WE WILL NOT selectively and disparately enforce our dress code rules in response to union or other protected, concerted activities.

WE WILL NOT tell our partners to remove or change out of Union t-shirts.

WE WILL NOT send our partners home for wearing Union t-shirts at work.

WE WILL NOT send our partners home to try to legitimize otherwise discriminatory conduct.

WE WILL NOT discipline you for wearing Union t-shirts at work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL rescind our overly broad logos, graphics, and writings rule, or revise this rule to make clear that our dress code does not prohibit our partners from wearing Union t-shirts.

WE WILL notify you that our overly broad logos, graphics, and writings rule has been rescinded, or if it has been revised, provide you with a copy of the revised dress code rule.

WE WILL make Megan DiMotta, Elizabeth Kurchak, Casey Chen, and Jennifer DeJesus Sanchez whole for any loss of pay and other benefits resulting from the times in October and November 2022 we sent them home early for wearing Union t-shirts at work.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL file with the Regional Director for Region 29 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 each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

Starbucks Corp.

(Employer)

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

National Labor Relations Board Region 29
Two Metro Tech Center, Suite 5100
Brooklyn, NY 11201-3838
Hours of Operation: 9:00 a.m. to 5:30 p.m.
718-330-7713

The Administrative Law Judge's decision can be found at 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.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-7713.