Starbucks Corporation *and* Workers United, Affiliated With Service Employees International Union. Case 21–CA–294571

October 2, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS PROUTY AND WILCOX

On October 6, 2023, Administrative Law Judge Brian D. Gee issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs, and the Respondent filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[1]

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions, and to adopt the recommended Order as modified and set forth in full below.[4] Specifically, we adopt the judge's determination that the Respondent violated Section 8(a)(1) of the Act when, at one of its "collaboration sessions," interim CEO Howard Schultz invited an employee to quit after that employee raised issues related to unionization.

We agree with the judge, for the reasons he states, that during the April 8 "collaboration session" held at a Long Beach, California conference center for the stated purpose of "co-creating" improvement in working conditions at Starbucks, the Respondent violated Section 8(a)(1) when Schultz said to employee Hall, "if you're not happy at Starbucks, you can go work for another company," in response to Hall's attempt to discuss the benefits of unionization and the Respondent's unfair labor practices at other stores in response to union organizing. In so finding, we note that the judge correctly set forth and applied the Board's objective standard for evaluating allegedly coercive statements made by employers to employees. See, e.g., *Lush Cosmetics, LLC*, 372 NLRB No. 54, slip op. at

[1] The Respondent asserts that Members Prouty and Wilcox should recuse themselves, claiming that their "past, present, and perceived relationship" with the Service Employees International Union (SEIU) and its affiliate, Charging Party Workers United, creates a conflict of interest. Members Prouty and Wilcox have determined, in consultation with the Board's Designated Agency Ethics Official, that there is no basis to recuse themselves from the adjudication of this case.

[2] The judge took administrative notice of a joint stipulation between the General Counsel, Respondent, and Union in a separate proceeding as background concerning the Respondent's actions to counter the Union's nationwide campaign to organize its stores. We note that by filing only a bare exception contesting the judge's action, the Respondent waived its argument. *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006). Even if the Respondent had not waived the argument, we would find it unnecessary to rely on the stipulation for the information in question, as the Board may take administrative notice of its own proceedings, which are, in any event, public knowledge. *Farmer Bros. Co.*, 303 NLRB 638, 638 fn. 1 (1991), enfd. 988 F.2d 120 (9th Cir. 1993).

We note that the Respondent excepts to the judge's granting, in part, the General Counsel's petition to revoke a subpoena duces tecum that the Respondent issued to former employee Madison Hall, as well as the judge's failure to draw an adverse inference regarding Hall's credibility based on the Respondent's allegation that Hall spoliated evidence. We find that the judge did not abuse his discretion by these actions. As to the Respondent's arguments regarding the petition to revoke, we find no merit in the Respondent's exception to the judge's revocation of portions of its subpoena that sought irrelevant information or improperly inquired into employees' Sec. 7 activities. See, e.g., *King Soopers, Inc.*, 364 NLRB 1153, 1160, 1174 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017); *Chino Valley Medical Center*, 362 NLRB 283, 283 fn. 1 (2015), enfd. in relevant part sub nom. *United Nurses Associations of California v. NLRB*, 871 F.3d 767 (9th Cir. 2017). Having found that the judge did not abuse his discretion in ruling on the General Counsel's petition to revoke, we find it unnecessary to reach the Respondent's arguments regarding whether the Union had standing to file a petition to revoke similar to that filed by the General Counsel. Turning to the Respondent's arguments that Hall spoliated evidence by disposing of the contents of the binder Hall brought to the April 8 "collaboration session" discussed below, we find that, even assuming arguendo that spoliation principles apply to Hall, the Respondent failed to show that Hall acted with a "culpable state of mind" and that the contents of Hall's discarded binder were relevant to the alleged threat by Schultz to Hall under the Board's objective standard for evaluating Sec. 8(a)(1) allegations. See *Communication Workers of America, AFL–CIO, Local 51*, 371 NLRB No. 15, slip op. at 5 (2021).

[3] The Respondent argues that the Board's structure violates Article II of the Constitution because Board Members and administrative law judges are inappropriately protected from removal by the President. We reject these arguments, which the Respondent waived by raising for the first time in its exceptions brief. *Starbucks Corp.*, 373 NLRB No. 75, slip op. at 1 fn. 2 (2024). Moreover, even if it were timely raised, we have rejected this argument as it applies to Board Members' removal under 29 U.S.C. § 153. *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1-2 (2023).

We note that there are no exceptions to the judge's dismissal of the Sec. 8(a)(1) allegations that the Respondent engaged in unlawful interrogation and polling at the April 8 event.

[4] The judge's recommended Order includes notice posting, electronic distribution, and notice reading by a management official or Board agent at all stores in the Long Beach, California, area that had an employee present at the collaboration session. We agree with the geographic scope of the notice posting and distribution remedy, but find it sufficient, together with our other traditional remedies, to effectuate the purposes of the Act in this matter without including a notice-reading remedy. See, e.g., *Starbucks Corp.*, 373 NLRB No. 45, slip op. at 1 fn. 3 (2024); *Starbucks Corp.*, 373 NLRB No. 33, slip op. at 1 fn. 3 (2024). We shall modify the judge's recommended Order to conform to the remedies imposed and our standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

Member Prouty would order notice reading at all Long Beach stores affected by the Respondent's unfair labor practice, as requested by the General Counsel. See *CP Anchorage Hotel 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151, slip op. at 9–15 (2022).

3 (2023); *KSM Industries*, 336 NLRB 133, 133 (2001).[5] For the first time on exceptions, the Respondent argues that the Board should abandon its longstanding objective test and instead apply a subjective standard based on *Counterman v. Colorado*, 600 U.S. 66, 72–78 (2023). We deem this untimely argument waived, consistent with our precedent. See *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989) ("A contention raised for the first time in exceptions to the Board is ordinarily untimely raised and, thus, deemed waived."), enfd. 922 F.2d 832 (3d Cir. 1990). Moreover, even if the argument had been timely raised, we would reject it. See *Apple, Inc.*, 373 NLRB No. 52, slip op. at 1 fn. 2 (2024).

In adopting the judge's finding of the violation above, we emphasize that the Board has long held unlawful employers' statements that employees dissatisfied with working conditions should quit rather than try to improve them through union activity. See, e.g., *Ozburn-Hessey Logistics, LLC*, 359 NLRB 1025, 1025–1026 (2013) (adopting judge's finding coercive a manager's endorsement of antiunion employee's statement "that if union supporters were so unhappy, then they should seek other employment" as "rest[ing] on settled law"), affd. 361 NLRB 921 (2014), enfd. 833 F.3d 210 (D.C. Cir. 2016). As pertinent here, the Board has found it to be an implicit threat of discharge when an employer tells an employee in relation to their union support or other Section 7 activity that if they are unhappy on the job, they should seek work elsewhere. *Chinese Daily News*, 346 NLRB 906, 906, 919 (2006), enfd. 224 Fed. Appx. 6 (D.C. Cir. 2007); see also *Paper Mart*, 319 NLRB 9, 9 (1995); *Rolligon Corp.*, 254 NLRB 22, 22 (1981). Even where an employer rhetorically asks an employee supporting a union "why, if [the employee] was not happy on the job, did he continue his employment," the Board has found such statements to constitute a "threat that management considers engaging in union activities and continued employment essentially incompatible." *Padre Dodge*, 205 NLRB 252, 252 (1973). Indeed, for decades, and in a variety of circumstances, the Board has recognized that employer suggestions, in response to employees' union or protected concerted activity, that if the employees are unhappy they should seek employment elsewhere reasonably tend to coerce employees from exercising their rights under the Act. See *Ramar Dress Corp*., 175 NLRB 320, 327 (1969) (statement that if employees "wanted a union they should go to work in a union shop . . . operated to interfere with and coerce employees in their unfettered exercise of their rights freely to decide whether they wished representation by a labor organization"); *General Industries, Inc.*, 121 NLRB 1608, 1609, 1613 (1958) ("suggestion that [employee] 'quit' if he was 'that unhappy here' . . . betrayed [employer's] intolerance of collective or concerted activity as a means of ameliorating conditions, even those concededly needing improvement"); *Mautz Paint & Varnish Co*., 117 NLRB 496, 507 (1957) (finding remarks that employee engaged in union advocacy would be happier elsewhere since he was "not satisfied with the company policies" coercive because of their "obvious assumption that such advocacy disqualified one for satisfactory employment with the respondent").

Further, in rejecting the Respondent's argument that the judge failed to consider context in deeming the April 8 statement coercive, we note that the judge identified the Respondent's highest official, interim CEO Schultz, as a "legendary leader," a status that would exacerbate the coercive nature of Schultz's statement. See, e.g., *Aqua-Aston Hospitality, LLC d/b/a Aston Waikiki Beach and Hotel Renew*, 365 NLRB 592, 599–600 (2017). Schultz also subtly demeaned Hall as "angry" and explicitly denigrated Hall for speaking up about working conditions and the Union despite having only two years of seniority. These disparaging remarks compounded the coercive tendency of his statement to Hall. See *Wal-Mart Stores*, 350 NLRB 879, 880 (2007) (finding employer's invitation to quit coercive when combined with disparaging remarks for engaging in union activity). Moreover, contrary to the Respondent's argument, Schultz's generic assurances against retaliation at the opening of the meeting hardly lessened the objective tendency of his invitation to quit to have a coercive effect on Hall and the 13 other employees in attendance, particularly given his surrounding explicit references to the Union. These factors, set against a backdrop of unfair labor practice litigation arising from the Respondent's response to the Union's nationwide organizing, provide ample context for finding Schultz's statement objectively coercive.

ORDER

The National Labor Relations Board orders that the Respondent, Starbucks Corporation, Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Impliedly threatening employees with discharge if they engage in union or other protected concerted activities.

[5] In adopting the judge's finding of the violation, we do not rely on his discussion of the nonprecedential cases *Chicanos Por La Causa, Inc.*, No. 28–CA–260450, JD-(SF)-10-22, 2022 WL 1104976 (April 13, 2022), adopted in the absence of exceptions 2022 WL 1718986 (May 26, 2022), and *Community Organized Relief Effort (CORE)*, No. 31-CA-272228, JD-(SF)-09-23, 2023 WL 2971492 (April 17, 2023), reversed and remanded 373 NLRB No. 106 (2024).

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

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

(a) Post at all of its stores in the Long Beach, California, area that had an employee present at the April 8, 2022 collaboration session copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed one or more of the above-referenced stores, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed store(s) at any time since April 8, 2022.[6]

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

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

Dated, Washington, D.C. October 2, 2024

Lauren McFerran, Chairman

David M. Prouty, Member

Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT impliedly threaten you with discharge if you engage in union or other protected concerted activities.

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

STARBUCKS CORP. LLC

The Board's decision can be found at www.nlrb.gov/case/21-CA-294571 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.

[6] If the above-referenced stores are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If a store involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted at that store within 14 days after it reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

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

Lindsay R. Parker and *Phuong Do, Esqs.,* for the General Counsel.
Jonathan O. Levine, Noah Garber, Rana Haimout, and *Paul D. Weiner, Esqs.,* for the Respondent.
Gabe Frumkin, Esq., for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

BRIAN D. GEE, Administrative Law Judge. This case was tried before me on February 6, 2023, using the Zoom for Government Platform and on February 7 and March 13, 2023, in Los Angeles, California. The General Counsel issued the complaint and notice of hearing on October 28, 2022 (the complaint), based on a charge filed by Charging Party Workers United, affiliated with Service Employees International Union (the Union) on April 21, 2022, and amended on June 7, 2022. The complaint alleges that Respondent Starbucks Corporation (Respondent or Starbucks) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by threatening, interrogating, and polling employees at a "partner collaboration session" on April 8, 2022.[1] Respondent timely filed an answer on November 14, 2022, and an amended answer on February 2, 2023, denying all material allegations. (GC Exh. 1.)

Based on a careful review of the entire record, including posthearing briefs[2] and my observation of the demeanor of the witness, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Washington corporation that operates Starbucks stores located throughout the United States, including the store at 5251 2nd Street in Long Beach, California, where it is engaged in the retail sale of food and beverages. During the 12-month period ending April 30, 2022, Respondent derived gross revenues in excess of $500,000 and purchased and received at its California facilities goods valued in excess of $5,000 directly from points located outside of the State of California. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. I also find, as Respondent admits, that the Union is a labor organization within the meaning of Section 2(5) of the Act. (Jt. Exh. 5(a).) I therefore find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction over this matter, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Starbucks operates approximately 9,000 stores located throughout the United States, where it employs approximately 220,000 staff members, whom it calls "partners." Its North American retail operations are organized into 12 regions, which are further divided into areas and districts. At its stores, the nonsupervisory positions are Barista and Shift Supervisor; supervisory positions include Assistant Store Manager and Store Manager. Above these store-based positions in the company hierarchy are District Manager, Regional Director, and Regional Vice President. (Jt. Exh. 5(a).)

During the dates material to this case, Howard Schultz was the interim Chief Executive Officer, Greg Budzak was the Regional Vice President of Operations, Gina Sterling was the Regional Director, and Sharon Moy and Shannon Dalton were District Managers. Respondent admits, and I find, that all were Section 2(13) agents of Respondent. (Jt. Exh. 5(a).)

The Union began organizing employees at Starbucks stores in August 2021. Since the filing of the first representation petition in Case 03–RC–282115 for a store in Buffalo, New York (Store 7381), more than 325 additional petitions were filed by October 2022. Additionally, more than 335 unfair labor practice (ULP) charges were filed with Regional offices, resulting in the issuance of more than 65 ULP complaints.[3]

Madison "Mads" Hall[4] was a Barista at Starbucks store number 579, located in the Belmont Shore neighborhood in Long Beach, from June 2021 through July 2022.[5] In this capacity, Hall's duties included ringing up customer orders, preparing beverages, stocking supplies, and cleaning the store. (Jt. Exh. 5(a), Tr. 59–60, 180.)

In early April, Respondent invited employees from various stores in Long Beach to attend an "afternoon of coffee and

[1] The complaint initially included the allegation that Respondent violated Section 8(a)(1) by soliciting employee complaints and grievances. On February 22, 2023, the General Counsel moved to sever that allegation from the complaint based on a withdrawal request by the Union. I granted that motion, severing Paragraph 7(a) from the complaint.

[2] On May 23, 2023, Respondent filed a motion to strike portions of the General Counsel's brief which "make claim[] to a nationwide organizing campaign and Starbucks' response." The basis of Respondent's motion was based, in part, on its assertion that, "no evidence was admitted at the Hearing in support of these claims." While I deny Respondent's motion, I have considered only evidence that was made part of the record or for which I take administrative notice.

[3] At trial, General Counsel offered into evidence a spreadsheet they created listing representation petitions and ULP charges filed between August 1, 2021, and April 8, 2022. Respondent objected based on relevance and concerns about accuracy, as General Counsel presented no witness to testify about the document. I rejected the document based on relevance, as ULP charges merely represent allegations of wrongdoing, not findings, but signaled that I could take administrative notice based on findings in Board or ALJ decisions. Consistent with that, I have taken administrative notice of the Stipulation of Facts (¶¶ 5, 6, and 36) between the General Counsel, the Union, and Respondent in *Starbucks Corporation* – JD(SF)-29-23 (September 2023). That stipulation was executed by all parties on October 26, 2022, and was entered into the record as Joint Exhibit 80 in the ULP hearing in Case Nos. 19-CA-294579, et al.

[4] Hall uses the pronouns "they" and "them" and was referred to in the record by the title "Mx." (Tr. 95.) At the time of the hearing, Hall was no longer employed by Respondent. (Tr. 59.)

[5] All dates are for the year 2022, unless stated otherwise.

collaboration" at a conference facility near the Long Beach Airport. The stated purpose of the collaboration session was to "plan for the future of Starbucks" and for employees to share their "ideas and thought partnership." (Jt. Exh. 3.) Store Manager Natalie Ruiz told Hall that this was an "opportunity" for them to "meet with upper level management" and that Hall would be the only employee attending from their store. A few days later, District Manager Shannon Dalton visited Store 579 and handed Hall an invitation to the collaboration session. (Tr. 63.) The invitation said that attendees would be paid for their participation. (GC Exh. 2.) While Hall was actively involved in organizing the Union by this date, there is no evidence that Respondent was aware of that.[6]

The collaboration session was held on April 8 in a conference room in a commercial building located near the Long Beach Airport. In addition to Hall, 13 Baristas and Shift Supervisors from various Long Beach Starbucks stores were present. So were Long Beach area Store Managers Nadine Doremus and Vivica Robles.[7] (Jt. Exh. 5(a).) Also present were upper-level managers, including Regional Vice President of Operations Greg Budzak, Regional Director Gina Sterling, District Manager Sharon Moy, and Diversity Equity and Inclusion Officer Camille Hymes. (Jt. Exh. 5(a), Tr. 67, 190–192.) Respondent had one person taking photographs of the session using a camera, while two other individuals appeared to be videotaping the meeting using cellphones. (Tr. 93–94.)

With employees seated on chairs arranged in a semi-circle and managers standing, the attendees watched a 45-minute video, titled "Our Best Days are Ahead," in which Schultz announced his recent return to the company as interim CEO. Shortly after the video concluded, Schultz walked into the room, eliciting comments of surprise, and took a seat with the employees. Employees then introduced themselves, stating their name, job position, store location, and tenure with the company. The session was moderated by Nikki Cicerani, a representative of SY Partners, a third-party management consulting firm.[8] (Jt. Exhs. 4, 5(a), Tr. 71–74.) The event was part of a "listening tour" with employees that Schultz was participating in. (Tr. 196–198.)

In the first activity, posters were placed on the floor in front of employees. The posters contained comments obtained from Partner Playback sessions, divided into two halves. On the left side of the posters (which were all identical) were statements such as, "We stand by our mission and values," "We care for our customers, our communities, and our planet," and "We want to be here, and we strive to support each other." On the right side were comments that appeared to be comments from employees on challenges they face, such as "My job is getting harder," "Customer expectations are difficult to meet," "I don't feel safe in my store," and "I don't feel supported by my leaders." Cicerani asked employees to share their reactions to the various comments. The two subjects that produced the most group discussion were the poor quality of the equipment and safety concerns at the stores. (GC Exh. 3, 5(a), Tr. 75–77.)

In the second activity, Cicerani put four posters on the wall. The posters were on blank white sheets of paper, approximately 2 feet wide and 3 feet long, with a single question handwritten on each. The four questions were: "What's the one thing we could do to rebuild trust in the company?" "What's one thing Starbucks can do that would make you even more proud to be a partner?" "What can we dream up next to be a different kind of company?" and "How might we build TOGETHER?"[9] Employees were given post-it notes and Cicerani asked them to write answers to any of these questions and affix those notes to the related poster. (Jt. Exh. 5(a), GC Exhs. 4–7, Tr. 80–81.) Nobody was asked to identify themselves on their post-it note. (Tr. 316–317.)

Hall wrote and affixed post-it notes with union-related comments on all four posters. For the poster asking employees what Respondent could do to rebuild trust, Hall wrote two post-it notes: "Be truthful about what is happening to pro-union partners" and "Sign fair labor practices!" As to this second note, Hall meant to write "Sign fair election principles," referencing the Union's effort to get Starbucks to pledge that it agreed not to interfere with the Union's organizing efforts. None of the other post-it notes from other employees mentioned the Union; rather, they raised issues such as, "Supply shortages," "Value our work with better pay," and "More/better vegetarian options." (Jt. Exh. 5(a), GC Exh. 4.)

For the poster asking how the company could make employees "even more proud to be a partner," Hall wrote: "First company in the industry to support worker's right to organize." None of the other employees' post-it notes mentioned the Union. They brought up subjects like, "Recognition for long term partners," "Using less plastic and continuing to lead in sustainable practices," and "Better LGBT + support." (Jt. Exh. 5(a), GC Exh. 5.)

For the poster asking for ideas on how Starbucks could be a "different kind of company," Hall wrote: "Give partners a seat at the table." None of the other employee comments mentioned the Union, but rather raised issues such as, "Incentives for milestones not just SMs," "Childcare supplement more than 20 days," and "Prioritize mental health." (Jt. Exh. 5(a), GC Exh. 6.)

For the poster asking how Respondent and employees could build together, Hall wrote: "collective bargaining." (GC Exh. 7, Tr. 82–87.) None of the other post-it notes referenced the Union, but instead brought up issues like, "Stronger emphasis on shift supervisor unity," "Transparent communication. Always

[6] From January through June, Hall's organizing activities included contacting the Union to discuss organizing Store 579, speaking to coworkers about the Union, arranging for a Zoom call between employees and the Union, and handing out and collecting authorization cards. (Tr. 61.) The Union filed its representation petition for Store 579 in Case 21–RC–293881 on April 11, three days after the Long Beach collaboration session. Pursuant to that petition and a stipulated election agreement, the Board conducted a mail ballot election. Upon the counting of ballots on June 20, the Regional Director of Region 21 certified that a majority of the employees in the proposed unit had not cast their ballots for any labor organization. (GC Exhs. 10, 11, 12, Tr. 180, 182.)

[7] Respondent admitted that both Doremus and Robles were managers and/or Section 2(11) supervisors under the Act.

[8] See About - SYPartners (last visited on September 29, 2023). Respondent admits, and I find, that Cicerani was a Section 2(13) agent of Respondent. (Jt. Exh. 5(a).)

[9] Hall testified on cross-examination that none of these questions explicitly asked employees about their union sentiments and that it was Hall who raised the Union on their post-it notes. (Tr. 310, 320.)

between corporate and store partners," and "Pivot holiday labor to cover drink trends. Fail fast. Try again." (Jt. Exh. 5(a), GC Exh. 7.)

During this activity, facilitator Cicerani reviewed Hall's post-it notes and remarked that she was surprised that Hall had said nothing about climate change, an issue Hall had raised earlier in the session. (Tr. 339–340, 343–344.)

Once the post-it notes were up on the posters, Cicerani asked employees to take green dot stickers and place them next to any post-it notes they agreed with. (GC Exhs. 4–7, Tr. 83.) Employees were free to place green dots wherever they chose and free to refrain from affixing any green dots at all. (Tr. 311, 314, 316.)

Cicerani asked employees if they wished to comment on any of the post-it notes, whether theirs or another person's. During that segment, Hall made a number of remarks touching on the Union, including urging Respondent to be "honest about what's happening with pro-union partners" and asserting, "Starbucks keeps saying that they're not anti-union, but their actions say otherwise." (Jt. Exh. 2.)

When Cicerani asked them to elaborate on some of those thoughts, Hall said that employees should be able to live in the city in which they worked and that, while Starbucks at one time set the standard for paying good benefits and wages, other companies had pulled even. At this point, Schultz joined the discussion and spoke about Starbuck's history of progressive benefits, including healthcare for fulltime and part-time employees, creation of a stock ownership program called "Bean Stock," a free college tuition program, and continued payments to workers during COVID and to employees of the stores closed in Russia. Schultz said he agreed with Hall's statement that employees should earn a "living wage" that would allow them to live in the city they work in, but for the corporation to do that, it needed to grow and make a profit. "The company has to grow to create opportunities for everyone at Starbucks," Schultz explained. He went on to say, "And I sense from you a little bit of anger towards the company, and I just want to know why. Why are you angry at Starbucks?" (Jt. Exh. 1, pp. 1–5, Jt. Exh. 2.)

Hall responded, "God. I mean, I don't know how much time I have. But I mean, we can start with the NLRB charges that are currently open." Schultz tried to discourage Hall from continuing by saying , "I don't think this is the place to. I mean…I'd be happy to talk to you about that one on one." Hall pointed to one of the posters and said, "So one thing that we could do to rebuild trust in the company, I think that transparency and honesty from you is what we need. Are you willing to be honest with us?" (Jt. Exh. 1, pp. 1–5, Jt. Exh. 2.)

Schultz and Hall were looking directly at each other. Others in the room were now silent and several attendees turned around to view the exchange. Schultz let out an indignant half-laugh and said, "I'm here to be 100 percent honest and transparent. You've been with the company two years. I would just ask you to have a little bit more respect for the people who have been here more—more years than you. And the fact that I've come here, not to talk about a union issue, I've come here to address the issues that we need to address to improve the company. And if you're not happy at Starbucks, you can go work for another company." (Jt. Exh. 1, pp. 5–6, Jt. Exh. 2.) Schultz had an angry expression on his face. (Tr. 239–240.)

After a pause, Hall said, "Okay" and another employee spoke up, diffusing the situation. (Jt. Exh. 1, pp. 5–6, Jt. Exh. 2.) Regional Manager Sterling, Diversity and Inclusion representative Hymes, and District Manager Sharon Moy were present in the room but remained silent, as did Store Managers Nadine Doremus and Vivica Robles. (Jt. Exh. 1, pp. 6–7, Jt. Exh. 2, Jt. Exh. 5(a), Tr. 111–112.)

Cicerani refocused the conversation by asking the group whether there was a way for Respondent to continue its history of being a progressive company while still prospering in a changed post-pandemic economy. She then gave the floor to Hall for nearly three full minutes. Hall spoke about the existence of unfair labor practice charges (ULP) and Administrative Law Judge (ALJ) decisions against the company, including saying, "I love the mission and values [of Respondent]. But it's just very clear that the mission and values are not being followed right now." Hall also discussed her perception that Respondent was being hypocritical by using union-neutral rhetoric while engaging in antiunion conduct, including saying, "And so we're constantly being told, 'Oh, we're not antiunion, you know we want you to,' but then your – your actions directly go against that, I mean, words only go so far. If what you are doing is being – you're being found guilty of it by the law, then you cannot sit here and look at – look at our faces and tell us you're not anti-union." (Jt. Exh. 1, pp. 8–11, Jt. Exh. 2.)

Hymes interjected to give Schultz the opportunity to comment on Hall's "great questions." Schultz recounted a story about a purported union organizer interrupting a memorial service the day before for a valued employee at a store in Chicago who had been "murdered four days before." (Jt. Exh. 1, p. 14, Jt. Exh. 2.) Shortly after Schultz told his story, the session ended.

During the collaboration session, no representative of Respondent asked any employee about their union activities, the union activities of others, or any union-related topics placed on any of the posters. (Tr. 318–322.) Employees were free to participate or refrain from participating in the activities; they were also free to leave the room or the session at any time. (Tr. 323–326.) In total, the session lasted approximately 2.5 to 2.75 hours. Attendees were compensated for their time and transportation costs.[10] (Tr. 188, 326.)

[10] On April 11, Respondent published an article on its Starbucks Stories website titled, "Inside collaboration sessions with Starbucks ceo Howard Schultz and partners." The article stated that, "Collaboration sessions are intimate, honest and authentic conversations among partners from all levels of the company. In this space, all participants – including our ceo, store managers, assistant store managers and baristas—are on equal footing. With a facilitator in the room to help connect ideas, Schultz is also joined by a rotating list of company leaders. The feedback we receive from partners will play a critical role in informing our investments in partner experiences and business operations." It also included a description of the format for the collaboration sessions with Schultz, including the Long Beach event. (GC Exh. 21; see also Inside collaboration sessions with Starbucks ceo Howard Schultz and partners, last checked on September 29, 2023.)

III. ANALYSIS

A. The Alleged Threat

Paragraph 6 of the complaint alleges that Respondent violated Section 8(a)(1) on April 8 when Schultz threatened employees with discharge by inviting them to quit their employment because they engaged in union and/or other protected concerted activities.

The Board's standard for analyzing alleged Section 8(a)(1) coercive statements is whether "they have a reasonable tendency to coerce employees in the exercise of their Section 7 rights. Intent is immaterial." *Lush Cosmetics, LLC*, 372 NLRB No. 54, slip op. at 3 (2023)(citing *KSM Industries, Inc*., 336 NLRB 133, 133 (2001) and other decisions). Where a statement is ambiguous or a veiled threat, the Board will examine the totality of the circumstances in assessing the statement's reasonable tendency. Id. Whether the employee subjected to the statement changed their behavior in response is not dispositive, nor is the employee's subjective interpretation of the statement. See *Boar's Head Provisions Co*., 370 NLRB No. 124, slip op. at 16 (2021); *Sunnyside Home Care Project*, 308 NLRB 346, 346 fn. 1 (1992). The Board considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees' free exercise of their rights under the Act. See *American Tissue Corp*., 336 NLRB 435, 441–442 (2001).

An employer violates Section 8(a)(1) when, in response to their Section 7 activity, it invites employees to quit. Such invitations amount to implied threats of discharge because they suggest that engaging in protected concerted activities is incompatible with continued employment. C*hinese Daily News*, 346 NLRB 906, 906 (2006)(implied threat telling employee to resign if she was not happy with her job), enfd. 224 Fed.Appx. 6 (D.C. Cir. 2007); *Jupiter Medical Center Pavilion*, 346 NLRB 650, 651 (2006)(finding an implied threat where, after an employee complained about working conditions, the employer said, "Maybe this isn't the place for you . . . there are a lot of jobs out there."); and *McDaniel Ford*, 322 NLRB 956, 956 fn. 1, and 962 (1997)(the Board found a threat where, after employees refused to work overtime and accept the new direct deposit system, the company president told them that, if they were unhappy, they should look for jobs somewhere else).

That is precisely what happened here. After Hall raised union-related issues during the collaboration session, Schultz said to Hall: "And I sense from you a little bit of anger towards the company, and I just want to know why. Why are you angry at Starbucks?" Even though Schultz is the legendary leader of Respondent, Hall did not shy away from his question. Rather, Hall raised the subject of ULP charges and asked Schultz to be "transparent" with the group. After saying he was there to be "100 percent honest and transparent" and "not to talk about a union issue," Schultz told Hall that he had returned to improve the company, "And if you're not happy at Starbucks, you can go work for another company." By saying this, Schultz sent the chilling message that Hall's advocacy of the Union was incompatible with continued employment with Starbucks. None of the upper level managers or the two Store Managers disavowed Schultz' statement. *Passavant Memorial Area Hospital*, 237 NLRB 138, 138–139 (1978).

In its brief, Respondent sought to downplay the coercive nature of the invitation to quit by asserting that Schultz was just "correctly and commonsensically indicat[ing] that if Hall was unhappy with their employer's plans, they might choose to work in a different environment where they would be happier." (R Brief, pp. 36–37.) In making this argument, Respondent cited to two recent ALJ decisions, *Chicanos Por La Causa, Inc*., JD(SF)-10-22, 2022 WL1104976 (April 2022), and *Community Organized Relief Effort (CORE)*, JD-(SF)-09-23, 2023 WL 2971492 (April 2023). Neither of those citations is helpful here. First, the circumstances involved in those decisions are distinguishable. In *La Causa*, the alleged violation occurred in March 2020, the first days of the COVID-19 pandemic in the United States. The employees had been designated "essential workers" and faced the dilemma whether to continue working in their jobs requiring direct client contact. It was during this "completely novel and disconcerting" time that their supervisor merely "commented that they may decide not to continue working at their jobs." Significantly, the ALJ did not find that the supervisor told the employees to quit. Id. at 15. In the instant case, however, it is irrefutable that Schultz told Hall to quit in response to their exercise of Section 7 rights. In *CORE*, the CEO's invitation to employees to resign was part of his impassioned effort to redirect their focus to the urgent cause of vaccinating large numbers of individuals in January 2021, when the first COVID-19 vaccinations were rolling out in the United States. Id. In contrast, Schultz' statement to Hall was an angry reaction to their protected statements that, in their view, Starbucks was not living up to its stated mission and values, and that Respondent should stop committing unfair labor practices. Schultz' indignant reply was made not in the context of a "once in a century" global pandemic, but in response to unwelcome union organizing. Schultz' invitation to quit was far more than a suggestion as to how Hall could be a happier person—rather, it was a chilling admonition that Hall's exercise of protected speech was incompatible with continued employment at Starbucks. Second, and more importantly, ALJ decisions pending before the Board on exceptions or for which no exceptions were filed are not binding authority. *Healthbridge Management, LLC*, 362 NLRB 310, 310 fn. 3 (2015), enfd. per curiam 672 Fed. Appx. 1 (D.C. Cir. 2016). I therefore adhere to well established Board precedent finding that such invitations to quit in response to employees' exercise of Section 7 rights are coercive.

Based on the foregoing, Respondent violated Section 8(a)(1) by making an alleged threat or implied threat of discharge, as alleged in paragraph 6 of the complaint.

B. The Alleged Interrogation and Polling

Paragraphs 7(b) and (c) of the complaint allege that Respondent violated Section 8(a)(1) on April 8 because Schultz and Ciceranni asked employees to place stickers next to statements regarding improving working conditions, including statements about the Union. The complaint alleges that Respondent's conduct in connection with the "green dot" exercise constituted unlawful interrogation and polling.

Interrogation. An employer engages in coercive interrogation when, under all of the circumstances, its questioning of employees reasonably tends to restrain, coerce, or interfere with the

rights guaranteed by the Act. *Rossmore House*, 269 NLRB 1176, 1177 (1984), affd. sub nom. *HERE LOCAL 11 V. NLRB*, 760 F.2d 1006 (9th Cir. 1985). The Board's examination of the totality of the circumstances includes looking at (1) the background between the employer and union, i.e., whether there is a history of employer hostility and discrimination; (2) nature of the information sought; (3) identity and rank of the questioner; (4) place and method of the interrogation; (5) truthfulness of the reply; (6) the timing; and (7) whether other unfair labor practices were occurring or had occurred. *River City Asphalt, Inc*., 372 NLRB No. 87, slip op. at 2 (May 2023)(citing *Rossmore House*, supra at 1178 fn. 20 (1984); *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964); and *Seton Co*., 332 NLRB 979, 982 (2000)(finding an unlawful interrogation and noting that the interrogation "occurred against a background of numerous other unfair labor practices"), enfd. mem. 276 F.3d 579 (3d Cir. 2001)).

In the instant case, two factors point towards finding a violation. Factor 1 (background between employer and union) and Factor 7 (other ULPs were occurring) both support finding that the green dot exercise occurred in a coercive environment. By April 8, the Union's nationwide organizing campaign had been proceeding for more than a year and a half, and had resulted in the litigation of ULPs before the Board. See, e.g., *Starbucks Coffee*, 372 NLRB No. 50 (2023). Additionally, the exercise occurred at the same meeting where Schultz unlawfully threatened Hall by inviting them to seek employment elsewhere.

But the balance of the factors failed to establish that the green dot exercise reasonably tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Factor 2 (the nature of the information sought) cuts against finding any violation. The invitation expressly notified attendees that the purpose of the collaboration session was to gather employee input on how to make the company better: "We are building a plan for the future of Starbucks and would greatly value your ideas and thought partnership." This was not unprecedented, as Respondent has a history of seeking employee input on how to improve the company. None of the four posters asked questions pertaining to the Union or unionization. Rather, consistent with the invitation, each of the four posters asked broad questions about ways that Respondent could improve by regaining the trust of its employees, instilling its workers with a sense of pride, improving as a company, and moving forward with its employees as "partners." The only person who initiated discussion about the Union was Hall, through their comments and post-it notes. As to Hall's post-it notes, Respondent did not treat them any differently than the others—that is, Respondent neither encouraged nor discouraged discussion about them. There was no indication that any of the posters touched upon issues that were part of the Union's organizing campaign.

On balance, Factors 3 and 4 (identity and rank of the questioner, and place and method of the interrogation) show no coercion. The exercise was conducted in an open conference room at a neutral site, not in the workplace or other location which would signal Respondent's power and authority over employees, such as a supervisor's office. Employees had full autonomy in deciding whether or not to attend the collaboration session, participate in either of the two exercises, place a post-it note on any of the posters, or affix a green dot. As for the content on the post-it notes, employees were free to write whatever they wanted. As to the identity and rank of the questioner, that can go either way. The person conducting the session, Cicerani, was an outside facilitator and therefore not a person who could discipline employees for their answers. On the other hand, the exercise was conducted with the interim CEO, upper level managers, and supervisory store managers present and observing. Additionally, individuals were taking videos and photographs that were later published on Respondent's Starbucks Stories website.

Factor 6 (the timing of the interrogation) favors finding no coercion. For Hall, the only employee who testified, this collaboration session took place before the Union filed its representation petition for Store 579 in Case 21-RC-293881 on April 11, three days after the session. Factor 5 (the truthfulness of the reply) does not show coercion since none of the questions on the posters asked about the employees' union activities or sentiments.

The cases and arguments relied on by the General Counsel in their brief are unpersuasive. In arguing that the green dot exercise "succeeded in uncovering the prounion sympathies of employees not known to be union supporters," they cite *Sea Breeze Health Care Ctr*., 331 NLRB 1131 (2000). But the facts of that case are distinguishable in that the employees there were required to identify themselves as a condition of eligibility for the monetary prize for the "Union Truth Quiz." Id at 1132–1133. In the instant case, Starbucks did not ask anybody to identify themselves either on their post-it notes or their green dots. Moreover, nobody did. Additionally, Starbucks offered no monetary incentive for employees to participate in the exercise. The General Counsel next asserts that Schultz teamed up with Cicerani to facilitate the green dot activity "that led employees to reveal their union sympathies." That assertion was unsupported in several ways: only Cicerani instructed employees on how the green dot activity worked, Schultz gave no instructions; the green dots were placed on the posters with no names indicated; and it was Hall, not Respondent, who introduced the five post-it notes referencing the Union. The General Counsel also contends that, since employees were specifically chosen to participate in this collaboration session and upper management was present, "employees reasonably would have felt compelled to be forthcoming with their responses." Counsel cite no Board decision supporting such a conclusion, and I decline to draw it here.

Based on the foregoing, I conclude that Respondent did not violate Section 8(a)(1) by interrogating employees about their union sympathies, and therefore dismiss paragraph 7(b) of the complaint.

Polling. An employer engages in unlawful polling by forcing an employee to make "an observable choice that demonstrates their support for or rejection of the union." *Allegheny Ludlum Corp.*, 333 NLRB 734, 740 (2001), enforced, 301 F.3d 167 (3d Cir. 2002). Polling can come in both verbal questioning and nonverbal activities. For example, in *Houston Coca Cola Bottling Company*, 256 NLRB 520, 520 (1981), the Board found that by "offering the Vote NO buttons and observing who accepted or rejected them," Respondent "in effect polled the employees about their sentiments regarding the Union."

The General counsel argues on brief that the green dot activity was Respondent's indirect attempt to gauge employee views towards unionism. That was simply not true. None of

Respondent's questions on the four posters asked about the Union or union organizing. It was Hall alone who brought up the Union, and Respondent asked no questions based on Hall's union-related post-it notes. Nothing in the way that Respondent conducted the activity showed or implied that it sought to elicit employee sentiments about the Union or about unionization in general.

Based on the foregoing, I conclude that Respondent did not violate Section 8(a)(1) by polling employees about their union support, and therefore dismiss paragraph 7(c) of the complaint.

CONCLUSIONS OF LAW

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

2. Charging Party Workers United, affiliated with Service Employees International Union, has been a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent committed an unfair labor practice in violation of Section 8(a)(1) of the Act by threatening or impliedly threatening employees by inviting them to quit in response to their union or other protected concerted activities.

4. The unfair labor practice found affects commerce within the meaning of Section 2(6) and (7) of the Act.

5. The allegations in paragraphs 7(b) and (c) of the complaint are dismissed.

REMEDY

Having found that the Respondent engaged in an unfair labor practice, I recommend that the Board order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act. Specifically, having found that it threatened employees in violation of Section 8(a)(1) of the Act, Respondent is ordered to post the notice to employees marked as "Appendix" at all stores in the Long Beach, California, area that had an employee present at the collaboration session. Respondent is also ordered to transmit the notice by text, email, and all other forms of electronic communication customarily utilized by Respondent, to all employees employed as of April 8, 2022, at any store in the Long Beach, California, area that had an employee present at the collaboration session. Respondent is also ordered to convene, during working time, all employees of any store that had an employee present at the collaboration session, and have the contents of the notice read by a management official in the presence of a Board agent, or if Respondent desires, by a Board agent in the presence of a management official.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

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

1. Cease and desist from

(a) Threatening or impliedly threatening employees by inviting them to quit in response to their having engaged in union or other protected concerted activity; and

(b) In any like or related manner interfere with, restrain, or coercive employees in the exercise of rights guaranteed to them by Section 7 of the Act.

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

(a) Within 14 days after service by the Region, post at all of its stores in the Long Beach, California, area that had an employee present at the collaboration session, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email and text, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If any of Respondent's stores has closed, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at the facility as of April 8, 2022.[12]

(b) Hold a meeting or meetings during work hours at its stores in the Long Beach, California, area that had an employee present at the collaboration session, scheduled to ensure the widest possible attendance of employees, at which the attached Notice marked "Appendix" will be read to employees by a management official of the Respondent in the presence of a Board agent or, at Respondent's option, by a Board agent in the presence of a management official of the Respondent.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 21 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.

[11] 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.

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

Dated, Washington, D.C. October 6, 2023

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 threaten or impliedly threatening employees by inviting them to quit because they engaged in union or other protected concerted activities.

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

STARBUCKS CORPORATION LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-294571 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.