Starbucks Corporation *and* Workers United. Cases 03–CA–285671, 03–CA–290555, 03–CA–291157, 03–CA–291196, 03–CA–291197, 03–CA–291199, 03–CA–291202, 03–CA–291377, 03–CA–291378, 03–CA–291379, 03–CA–291381, 03–CA-291386, 03–CA–291395, 03–CA–291399, 03–CA–291408, 03–CA-291412, 03-CA–291416, 03–CA-291418, 03–CA–291423, 03–CA–291431, 03–CA–291434, 03–CA–291725, 03–CA–292284, 03–CA–293362, 03–CA–293469, 03–CA–293489, 03-CA–293528, 03–CA–294336, 03–CA–293546, 03–CA–294341, 03–CA–294303, 03–CA–296200, and 03–RC–282127

December 16, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS PROUTY AND WILCOX

On March 1, 2023, Administrative Law Judge Michael A. Rosas issued the attached decision. The General Counsel, the Respondent, and the Charging Party Union each filed exceptions and a supporting brief. The General Counsel filed an answering brief in response to the Respondent's exceptions, the Respondent filed answering briefs in response to the General Counsel's and the Charging Party's exceptions, and the Charging Party filed an answering brief in response to the Respondent's exceptions. The Respondent filed reply briefs in response to the General Counsel's and the Charging Party's answering 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, findings,[2] and conclusions only to the extent consistent with this Decision and Order.[3]

I.

This proceeding involves numerous complaint allegations that the Respondent violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act by its actions in response to a union organizing campaign among its employees in Buffalo, New York. The facts are more fully set forth in the judge's decision. Briefly, on August 23, 2021, the Charging Party Union, Workers United, posted on social media an employee-signed letter addressed to the Respondent's then-CEO, Kevin Johnson. The letter announced a union organizing campaign at several of the Buffalo-area stores. The Respondent's response to the campaign was swift, extensive, and unprecedented. Almost immediately, a team of some of the Respondent's most senior national executives, including Rossann Williams, the then-executive vice president of Starbucks North America and the president of Starbucks U.S., arrived in Buffalo. For the first time, these senior executives regularly appeared in Buffalo-area stores to observe and interact directly with employees. They were joined by store-level managers—whom the Respondent calls "support managers"—brought to Buffalo from around the country to supplement or take over functions from incumbent store managers. The mass arrival of support managers ensured, for the first time, managerial presence in the stores during all of their operating hours.

In the days, weeks, and months that followed, employees continued to engage in union organizing activity protected by Section 7 of the Act.[4] Among other things, the

[1] The Respondent asserts that Members Prouty and Wilcox should recuse themselves, claiming that their "past, present and perceived relationships" with the Service Employees International Union, 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 Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544, 545 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We have amended the judge's conclusions of law consistent with our findings. We have amended the judge's remedy consistent with those legal conclusions and have modified the judge's recommended Order to conform to the violations found by the judge, our findings herein, and the Board's standard remedial language. We have substituted a new notice to conform to the Order as modified.

We find without merit the Respondent's contentions that it was denied due process because it was "limited" to briefing of 100 pages in support of its exceptions; that the judge abused his discretion in imposing modest evidentiary sanctions against the Respondent for its noncompliance with subpoenas and the judge's orders regarding those subpoenas; and that for-cause removal restrictions unconstitutionally protect the judge. With regard to the last point, the argument is also waived because the Respondent failed to raise it before the judge. See *Starbucks Corp.*, 373 NLRB No. 75, slip op. at 1 fn. 2 (2024).

We find it unnecessary to pass on the General Counsel's identification of a few highly technical errors in the judge's analysis because they do not affect the remedy.

[4] Sec. 7 provides that employees have the right to self-organize; form, join, or assist unions; bargain collectively through their chosen representatives; and engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection. 29 U.S.C. § 157.

employees discussed the pros and cons of union representation, wore pro-union pins and t-shirts, signed and gathered union authorization cards, filed petitions with the Board for union representation elections, and voted in those elections. The Respondent, by its senior executives, support managers, and existing store managers, responded by, among other things, more closely monitoring employees as they worked, imposing more onerous working conditions, threatening adverse consequences for unionizing, soliciting and remedying grievances, promising and granting new benefits, ordering and expediting store renovations and repairs, promising and implementing a wage increase, hiring additional employees, reallocating employees among stores, centralizing training functions, reducing certain stores' hours, permanently closing one store, strictly enforcing company rules that had previously gone mostly unenforced, and imposing discipline purportedly based on the enforcement of those rules, including by firing a number of employees actively involved in organizing activity.

At the Camp Road store, employees filed a representation petition on August 30, 2021, soon after the employees had gone public with their organizing campaign. At that point, a majority of the store's employees—16 of 30—had signed union-authorization cards. When the mail-ballot election votes were tallied on December 9, 2021, the employees at that store had voted against union representation, with 8 voting for representation and 12 against. The Charging Party filed objections to the Respondent's election-related conduct in Case 03-RC-282127. Those objections overlap with the unfair labor practice allegations at issue in this proceeding.

II.

As detailed more fully in his decision, the judge found that the Respondent violated Section 8(a)(1), (3), (4), and (5) in numerous respects. The judge also found merit to the Charging Party's election objections in Case 03–RC–282127 and set aside the results of that election. The judge further determined that, considering the nature and extent of the Respondent's unlawful actions, the Board's traditional remedies—specifically, a rerun of the election in Case 03–RC–282127—would be insufficient. Thus, in light of the Respondent's extensive and pervasive unfair labor practices that resulted in a loss of support for the Charging Party, the judge found that a bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969), was warranted at the Camp Road store.

As explained below, unless otherwise stated in this decision, we affirm, for the reasons stated by the judge, his careful and comprehensive findings that the Respondent violated the Act as alleged in numerous respects, as well as his dismissals of several allegations.[5] As explained in more detail below, we clarify some of the judge's findings and, in a few instances, reverse his findings.[6]

[5] In the absence of exceptions, we adopt the judge's findings that the Respondent violated Sec. 8(a)(1) by: allotting additional available work hours to employees at certain stores; threatening employee Madison Emler with discipline for raising employees' health and safety concerns to management; instructing employee Victoria Conklin not to give shifts to union supporters and threatening her with reprisals once she decided to support the Union; and prohibiting union-related speech during working time while allowing other non-work-related speech during working time. Also in the absence of exceptions, we adopt the judge's findings that the Respondent violated Sec. 8(a)(3) and (1) by prohibiting employee Gianna Reeve from attending a captive-audience meeting and by issuing a verbal warning to employees Reeve and Danka Dragic.

We note that there are no exceptions to the judge's dismissal of allegations that the Respondent violated Sec. 8(a)(1) by: soliciting grievances at an October 24, 2021 meeting at the Genesee Street store; soliciting grievances in September and October 2021 and specifically from employee Emler at the Transit & French store; soliciting grievances on August 24, 2021 at the Transit & Regal store; soliciting grievances at a September 29, 2021 meeting at the Transit & Regal store; soliciting grievances on September 22, 2021 at the Sheridan & Bailey store; promising a new benefit at the Main Street store in September or October 2021; granting benefits by firing managers and employees about whom other employees had complained; threatening Main Street store employees in September 2021 with the loss of various benefits; coercing Delaware & Chippewa store employees in October 2021 by requiring certain of them to be available for weekend shifts; and interrogating employee Angel Krempa about her union activities on February 25, 2022.

There are also no exceptions to the judge's dismissal of allegations that the Respondent violated Sec. 8(a)(3) and (1) by: retaliating against its employees for their union activities by centralizing training and thereby withdrawing from barista trainers opportunities to provide trainings; retaliating against its employees for their union activities by reducing operating hours at the Genesee Street store; retaliating against its employees for their union activities by reducing operating hours at the Transit & French store; retaliating against its employees for their union activities by imposing new requirements that made their job practices more difficult; retaliating against employee Rachel Cohen for her union activities by denying her request to pick up a shift outside her home store; retaliating against employee Erin O'Hare for her union activities by denying her a store transfer; retaliating against employees Dragic, Caroline Lerczak, and Nathan Tarnowski for their union activities by sending them home early from a shift; retaliating against employee Iliana Gomez for her union activities by giving her a lower seniority-based wage increase than other shift supervisors; retaliating against employee Mikaela Jazlyn Brisack for her union activities by denying her request for reduced availability; and retaliating against employee Alexis Rizzo for her union activities by issuing her a verbal warning.

[6] For the reasons stated by the judge, we adopt his findings that the Respondent violated Sec. 8(a)(5) and (1) by failing to notify and bargain with the Union regarding changes to the minimum availability policy at the Elmwood store and regarding the discharges of employees Edwin Park and Krempa.

III.

For the reasons set forth by the judge, we adopt his findings that the Respondent violated Section 8(a)(1) by: (1) creating the impression that employees' union activities were under surveillance;[7] (2) coercively interrogating employees;[8] (3) soliciting grievances during the organizing campaign; and (4) staffing the Genessee Street store to dilute the prounion vote during a representation election at that store. We also adopt his dismissals of the allegations that the Respondent violated Section 8(a)(1) by holding captive-audience meetings.[9]

In addition, for the reasons explained by the judge and as more fully discussed below, we adopt his findings that the Respondent violated Section 8(a)(1) by: (1) promising to grant or granting numerous benefits to employees in response to their Section 7 activity; and (2) making certain threatening statements to employees.

A. Promises and Grants of Benefits

The judge found that the Respondent violated Section 8(a)(1) in numerous respects by promising or granting benefits to employees. In adopting the judge's findings of these violations, we explain the established legal principles undergirding our findings. Section 8(a)(1) enforces Section 7 by making it unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of their organizational and other Section 7 rights. 29 U.S.C. § 158(a)(1). Relevant to the allegations at issue here, the Supreme Court has explained that "[t]he danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove." *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). The Court has thus rejected the notion that the Act's requirements in this regard "discourag[e] benefits for labor" because the "beneficence of an employer is likely to be ephemeral if prompted by a threat of unionization which is subsequently removed." Id. at 410. Accordingly, the Court determined that "[i]nsulating the right of collective organization from calculated good will of this sort deprives employees of little that has lasting value." Id. Consistent with these principles articulated by the Court, when an employer engages in such ostensibly employee-friendly conduct to dissuade its employees from supporting a union or otherwise engaging in Section 7-protected activity, the Board deems it violative of Section 8(a)(1) of the Act. See, e.g., *NP Red Rock LLC d/b/a Red Rock Casino Resort Spa*, 373 NLRB No. 67, slip op. at 2-4 (2024); *Imperial Eastman Corp.*, 139 NLRB 1255, 1259 (1962), enfd. 322 F.2d 679 (7th Cir. 1963).[10] The unlawful promise or grant of benefits, of course, may coexist with overtly hostile tactics, such as threats and pretextual firings of known Union-supporting employees, also found here. This combination of unfair labor practices "is a classic example of an employer's resort to the 'carrot and stick' tactic to thwart its employees' exercise of statutory rights." *El Rancho Market*, 235 NLRB 468, 470 (1978), enfd. 603 F.2d 223 (9th Cir. 1979).

Accordingly, we affirm the judge's findings of many Section 8(a)(1) violations arising from the Respondent's promises and grants of benefits once it became aware of the employees' organizing activity. Thus, the judge found, and we agree, that the Respondent violated Section 8(a)(1) by: promising wage increases on October 27,

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[7] We adopt the judge's findings that the Respondent created the impression that employees' union activities were under surveillance, in violation of Sec. 8(a)(1), by increasing the presence of support managers at Buffalo-area stores starting in late August 2021, having support managers wear headsets even when not on the floor of a store, and photographing employees. In adopting the judge's finding regarding the photographing allegation, we note that the judge found, on credibility grounds, that manager David Almond took a surreptitious smartphone photograph of an employee while the employee was wearing a Union pin. We find no basis to disturb the judge's credibility determination in this regard, see *Standard Dry Wall Products*, 91 NLRB at 545, and, in view of that determination, agree with the judge's conclusion that taking such a photograph created an unlawful impression of surveillance because an employee photographed while wearing a union insignia "would reasonably assume . . . that their union activities had been placed under surveillance." *Flexsteel Industries, Inc.*, 311 NLRB 257, 257 (1993).

Having found the other impression of surveillance violations, Chairman McFerran finds it unnecessary to pass on the photographing allegation, as any finding of this violation would be cumulative and would not materially affect the remedy.

[8] We adopt the judge's finding that the Respondent, by its manager Patricia Shanley, violated Sec. 8(a)(1) by interrogating employee Kellen Higgins around the end of November 2021 about his union views in a manner that would reasonably tend to interfere with the exercise of Sec. 7 rights. Having done so, we find it unnecessary to pass on the judge's finding that the Respondent, on a separate occasion, unlawfully interrogated employee Conklin about her union views, as any finding of this violation would be cumulative and would not materially affect the remedy. Member Prouty would affirm the judge's finding that the Respondent also unlawfully interrogated Conklin.

[9] The General Counsel requests that we overrule *Babcock & Wilcox Co.*, 77 NLRB 577 (1948), which held that an employer may lawfully hold a mandated meeting during which it attempts to persuade its employees to decline union representation. In *Amazon.com Services LLC*, 373 NLRB No. 136, slip op. at 1, 8-9, 12-20 (2024), we recently overruled *Babcock & Wilcox*, but we did so prospectively only. Accordingly, that overruling is inapplicable to cases, like this one, that were pending when *Amazon* was decided. We thus affirm the judge's dismissal of the allegation that the Respondent unlawfully held captive-audience meetings.

[10] Sec. 8(a)(1) allegations are typically analyzed under an objective standard, such that the employer's motive is irrelevant to the inquiry, but the 8(a)(1) analysis under *Exchange Parts* is motive-based and assesses whether the promise or grant of benefits was motivated by an unlawful purpose to coerce or interfere with protected activity. See, e.g., *Network Dynamics Cabling*, 351 NLRB 1423, 1424 (2007).

2021 and then implementing that wage increase in January 2022; promising improved working conditions on November 6, 2021; making or expediting store repairs and renovations between September 2021 and January 2022; providing the benefit of centralizing training in September and November 2021; alleviating understaffing starting in September 2021; authorizing store managers to disable mobile ordering and close stores between September and December 2021; posting work schedules more promptly in October 2021; and providing additional training to employee Krempa in October 2021.[11]

B. Unlawful Threatening Statements

The complaint alleges, and the judge found, that the Respondent violated Section 8(a)(1) by its managers making numerous threatening statements to its employees in August to November 2021. We affirm the judge's findings that many of the statements—which included assertions that unionization would prevent managers from helping employees on the store floor, eliminate employees' practice of picking up extra shifts at stores other than their "home" store, and prevent employees from receiving future new benefits—could reasonably be interpreted by employees to threaten the loss of existing benefits or other adverse consequences of unionization without any grounding in objective fact, in violation of Section 8(a)(1). See *NLRB v. Gissel Packing Co.*, 395 U.S. at 618; *Ebenezer Rail Car Services*, 333 NLRB 167, 167 fn. 2 (2001); *President Riverboat Casinos of Missouri*, 329 NLRB 77, 77-78 (1999). Such statements are unlawful because they reasonably could be understood by employees to threaten retaliation for exercising Section 7 rights.

However, to the limited extent that the judge found unlawful the Respondent's statements concerning the changed relationship between employer and employee caused by unionization—specifically, statements concerning employees' loss of a direct relationship with management—we reverse the judge's findings of these violations and dismiss the relevant complaint allegations. When this case commenced, statements of this sort were categorically lawful under *Tri-Cast, Inc.*, 274 NLRB 377 (1985). In *Siren Retail Corp. d/b/a Starbucks*, 373 NLRB No. 135, slip op. at 1-2, 6-12 (2024), we recently overruled *Tri-Cast*, but we did so prospectively only. Accordingly, that overruling is not applicable to cases, like this one, that were pending when *Siren Retail* was decided. Instead, we apply *Tri-Cast* here.

IV.

The judge found that the Respondent violated Section 8(a)(3) and (4) in numerous respects. In so doing, the judge applied the well-established principles set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under that framework, the General Counsel bears the initial burden of establishing that an employee's union or other protected activity was a motivating factor in the employer's adverse employment action. The General Counsel meets this burden by showing (1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) animus against union or other protected activity on the part of the employer. See, e.g., *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6 (2023), enfd. mem. Nos. 23-1831/1854, 2024 WL 2764160 (6th Cir. 2024). An employer's motivation is a question of fact that may be inferred from direct and circumstantial evidence on the record as a whole.[12] Id. Once the General Counsel sustains this initial burden under *Wright Line*, the burden shifts to the employer to show that it would have taken the same action even in the absence of the protected activity. *Wright Line*, 251 NLRB at 1089. However, the employer's burden in this regard cannot be

[11] We adopt, however, the judge's dismissal of the allegation that the Respondent, by manager Almond, violated Sec. 8(a)(1) by promising an employee a wage increase to discourage him from supporting the Union. The manager effectively stated that he thought the Respondent was proposing a wage increase in response to the organizing activity. When viewed in context from the perspective of a reasonable employee, the comment of the manager—who was uncomfortable with the Respondent's reaction to the organizing activity—was that of someone offering a candid observation of the Respondent's conduct, not that of a messenger speaking on behalf of the Respondent and promising a wage increase.

Having found that the Respondent violated Sec. 8(a)(1) by promising employees benefits in order to discourage them from supporting the Union in numerous other respects, Member Wilcox would find it unnecessary to pass on the judge's dismissal of the promise of benefits allegation related to Almond, as any finding of the violation would be cumulative and would not materially affect the remedy.

We also adopt the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(1) by refusing to hire employees at the Elmwood store. The General Counsel has not articulated the interference, restraint, or coercion as to employees' protected activity caused by that failure to hire.

[12] Circumstantial evidence of a discriminatory motive may include, but is not limited to, the timing of the adverse action in relation to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. *Intertape Polymer Corp*., 372 NLRB No. 133, slip op. at 6-7. In determining whether circumstantial evidence supports a reasonable inference of discriminatory motive, the Board does not follow a rote formula and has relied on many different combinations of factors. See id., slip op. at 7 fn. 27 (and cases cited therein).

satisfied by proffered reasons that are found to be pretextual, i.e., false reasons or reasons not in fact relied upon. See *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 7.

As the judge found throughout his discussion of the Section 8(a)(3) and (4) allegations, the General Counsel established union activity by the discriminatees and the Respondent's knowledge thereof. In addition, we agree, as the judge found, that the Respondent's "vast and systemic barrage of Section 8(a)(1) violations" warrant an inference that an overwhelming number of the adverse employment actions alleged to be unlawful in the complaint resulted from "the Respondent's extreme animus toward the organizing campaign in the Buffalo area."[13] In finding animus here, we further note that many of the alleged Section 8(a)(3) and (4) violations at issue in this case arise from what the Respondent termed a "level setting" campaign in the Buffalo area. As explained in more detail below, this "level setting," carried out in response to the employees' union organizing activity in the Buffalo area, undergirds many of the Respondent's actions alleged and found to be unlawful in this proceeding and further demonstrates the Respondent's discriminatory motive.

As detailed below, in most respects, we agree with the judge's assessment of the parties' respective *Wright Line* burdens made in connection with the issues before the Board in this proceeding, and we agree with his findings regarding the Section 8(a)(3) and (4) allegations. In the following discussion, we provide clarifications to some of the judge's findings and, in limited instances, reverse those findings.

A. Stricter Enforcement of Work Rules in Response to Union Activity

We agree with the judge that the Respondent violated Section 8(a)(3) by more strictly enforcing its workplace rules and policies in response to the employees' union activity.[14] In so doing, we note the key *Wright Line* principle relevant to this finding: absent proof of a legitimate nondiscriminatory reason, an employer is presumed to act on an unlawful motive when it deviates from its past practices concerning employees after it becomes aware of its employees' organizing activity. In this regard, the Board has held that, when it comes to enforcement of workplace policies and rules, "'[i]f the General Counsel demonstrates that the pattern of discipline after the commencement of union activity deviated from the pattern prior to the start of union activity, a prima facie case of discriminatory motive is established requiring the Respondent to show that its increased discipline was motivated by considerations unrelated to its employees' union activities.'" *Kitsap Tenant Support Services, Inc.*, 366 NLRB No. 98, slip op. at 21 (2018) (quoting *Jennie-O Foods*, 301 NLRB 305, 311 (1991)), enfd. mem. No. 18-1187, 2019 WL 12276113 (D.C. Cir. 2019). This presumption is reasonable. If the only change in the workplace is that employees have started to unionize, which the employer opposes, then that change offers a rational, and indeed likely, explanation for the employer's stricter enforcement of the rules. Of course, the employer may rebut that presumption by identifying a legitimate nondiscriminatory reason for the changed practices and showing that it would have changed those practices even absent the employees' protected activity. See *Wright Line*, 251 NLRB at 1089.

Here, starting around September 2021, district managers and support district managers engaged in an unprecedented area-wide "level setting" of stores in the Buffalo market—a program of stricter enforcement of work rules—that, as the judge found, occurred solely as a result of the organizing campaign. The "level setting" meant that the Respondent reiterated existing work rules and required employees to reacknowledge the rules and policies in writing. It also altered store policies and procedures without providing employees an explanation for doing so. The Respondent then began enforcing its rules and policies in a manner it had not done prior to the union organizing campaign. Under the Board precedent set forth above, the Respondent's actions triggered a presumption that it acted from an unlawful motivation.

In turn, we find that the Respondent has failed to show that its stricter enforcement of work rules was motivated by considerations unrelated to its employees' union activities. In this regard, the Respondent's purported legitimate, nondiscriminatory reason for these various changes is that it was simply addressing deficient expectations, standards, and conditions for employees in its Buffalo-area stores. However, those expectations, standards, and conditions were not new. Only after the Respondent learned of its employees' organizing activity did the Respondent take steps to address them. We thus find, in agreement with the judge, that the Respondent violated Section 8(a)(3) by more strictly enforcing its workplace

[13] Contrary to the Respondent's contention otherwise, the judge appropriately considered the Respondent's commission of contemporaneous unfair labor practices throughout its Buffalo-area stores as evidence warranting the inference that union animus at least partially motivated many of the adverse actions it took against its employees. See id., slip op. at 7; see also *Parsippany Hotel Management Co. v. NLRB*, 99 F.3d 413, 424 (D.C. Cir 1996); *Abbey's Transportation Services, Inc. v. NLRB*, 837 F.2d 575, 579–580 (2d Cir. 1988).

[14] We adopt, however, the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(3) by more strictly enforcing its mobile device rules, for the reasons stated in his decision.

rules and policies in response to the employees' union activity.

As noted above, the Respondent's stricter enforcement of workplace rules in response to the employees' organizing activity resulted in many of the Respondent's actions alleged to be unlawful in this proceeding. As the judge found, the "level setting" in the Buffalo area resulted in, among other things, dress code, attendance, and communication infractions by the employees. Many of those employees, particularly union supporters, were disciplined and/or discharged for the infractions. In these circumstances, we find that the Respondent's level-setting efforts, carried out in response to the employee's union organizing activity, constitutes further evidence of the Respondent's animus (in addition to the Respondent's "vast and systemic barrage of Section 8(a)(1) violations") that informs the allegations below involving employee disciplines, discharges, and other personnel actions. For similar reasons, we find that the Respondent's marked deviation from the pre-organizing status quo demonstrated that other of its actions, such as reduction of store hours and the imposition of more onerous working conditions, were unlawfully motivated.

B. Disciplines and Discharges

We agree, for the reasons stated by the judge, that the Respondent violated Section 8(a)(3) and (1) by: (1) discharging employees Higgins, Tarnowski, Brian Nuzzo, and Cassie Fleischer and banning Nuzzo from its stores; (2) issuing warnings and a documented coaching to, sending home early from work, and discharging employee Krempa; (3) issuing a final written warning and documented coaching to and discharging employee Park; (4) issuing a documented coaching to and discharging employee Daniel Rojas Jr.; (5) issuing a written warning and final written warning to employee Róisín Doherty; (6) issuing two written warnings to employee James Skretta; (7) issuing a written warning to employee Rizzo; (8) issuing employee Brian Murray a written warning and sending him home from work early;[15] and (9) issuing a written warning for cursing to employee Nicole Norton. We also find, for the reasons stated by the judge, that the Respondent violated Section 8(a)(4) by issuing employee Krempa a final written warning and discharging her. We clarify below the findings related to the allegation that the Respondent violated Section 8(a)(3) by issuing a verbal warning to employee Norton.

The judge found that the Respondent violated Section 8(a)(3) and (1) by pretextually issuing employee Norton a verbal warning for cursing in December 2021. The judge's factual finding, however, was that the warning for cursing was issued in January 2022 for foul language that Norton had used in November 2021 and that, in December 2021, Norton was only warned for noncompliance with the Respondent's dress code. On these clarified facts, we reverse the judge's finding that the Respondent issued an unlawful warning for cursing and, instead, we find that Respondent's issuance of a warning purportedly for a breach of its dress code rule in December 2021 violated Section 8(a)(3) and (1) because the breach previously would have gone unpunished and was instead retaliation for Norton's open and active organizing activity.

C. Store Closures, Reductions of Store Hours, and Reduction of Employee Hours

We agree with the judge, for the reasons he states, that the Respondent violated Section 8(a)(3) by: (1) temporarily closing certain of the Respondent's Buffalo-area stores; (2) reducing store hours at the Walden & Anderson store in August 2021 and at the UB Commons Store in January 2022; (3) reducing store hours at the East Robinson store and prohibiting shift supervisors from taking shifts as baristas in February 2022; and (4) reducing employee hours at the Elmwood store in November 2021. For the reasons discussed below, we affirm the judge's additional findings that the Respondent violated Section 8(a)(3) by reducing store hours at the Camp Road store and closing the Walden Galleria kiosk. However, we reverse the judge's finding that the Respondent unlawfully reduced the working hours of several employees at the Camp Road store, and we dismiss the related allegation.

The judge found that the Respondent violated Section 8(a)(3) and (1) by reducing the Camp Road store's operating hours in late August 2021. The record evidence, however, establishes that the reduction in store operating hours occurred in *October* 2021. Nevertheless, the record supports the inference that the October reduction in hours was retaliatory. The Respondent implemented that change about a month after a petition for a representation election was filed for that store and about a month before the start of the store's mail-ballot election. The judge also credited testimony that, at the same time, there was a large increase in staffing at the store, which renders pretextual the Respondent's contention that a staffing shortage was the reason it reduced the store's hours. We infer that the Respondent reduced the store's hours, at least in

[15] In view of the other findings that the Respondent violated Sec. 8(a)(3) and (1) by pretextually issuing its employees warnings for workplace rules violations to retaliate against them for their organizing activity, we find it unnecessary to pass on the judge's finding that the Respondent retaliated against employee Murray for his union activity by issuing him a verbal warning for a dress code violation.

part, to punish employees for their ongoing organizing activity and that it would not have taken such action absent the organizing activity. Accordingly, we affirm the judge's legal conclusion that the Respondent violated Section 8(a)(3) and (1) in this respect.

The judge found, and we agree, that the Respondent violated Section 8(a)(3) and (1) by closing the Walden Galleria kiosk. That store was a hub of organizing activity, was immediately targeted by the Respondent's corporate officials when they arrived in Buffalo after they became aware generally of the Buffalo-area organizing activity, was almost immediately thereafter temporarily closed for two weeks, and then was permanently closed. The various nonretaliatory conditions and considerations the Respondent purports to have relied on in closing the store—including a policy of closing shopping mall-based stores, its financial underperformance, its physical disrepair, and understaffing—all existed prior to the employees' organizing activity. We infer, then, that these factors were simply a pretext for the Respondent's decision to close the store after it became aware of the organizing activity.

The closure amounted to retaliation against employees at the store, but we also find that it was intended to indirectly discourage the organizing activity occurring at the other Buffalo-area stores. Thus, the closure was unlawful under *Textile Workers Union of America v. Darlington Manufacturing Co.*, 380 U.S. 263, 275–276 (1965), which the Respondent argues supplies the controlling legal standard. Given the relatively close physical proximity of the Buffalo-area stores, that the Walden Galleria kiosk employees subsequently worked at those stores, and that employees across various stores involved in the organizing campaign were regularly communicating with one another in a coordinated Buffalo-wide organizing campaign, it was "realistically foreseeable" that employees at the other Buffalo-area stores would fear that their stores would be closed too if they continued to engage in union activity. See id. at 276.

Finally, we reverse the judge's finding that the Respondent violated Section 8(a)(3) and (1) by reducing the working hours of employees William Westlake, Ryan Mox, Elissa Pfleuger, and Josh Pike at the Camp Road store. These employees were actively engaged in organizing activity, but the only evidence concerning the reduction in their working hours at the Camp Road store was Westlake's testimony concerning *proposed* schedules he had seen. When those schedules would have gone into effect, Westlake was on medical leave and so, as the judge found, Westlake did not know whether the employees' hours were actually reduced. Absent evidence of an actual reduction in these employees' working hours, we find that there is insufficient evidence to establish that the Respondent unlawfully reduced their working hours. We thus reverse the judge's finding of this violation and dismiss the relevant allegation.[16]

D. Other Adverse Employment Actions

For the reasons stated by the judge, we adopt his findings that the Respondent violated Section 8(a)(3) and (1) by: (1) imposing more onerous working conditions generally and, specifically, with respect to employees Park and Krempa; (2) reducing employee Reeve's shift supervisor shifts; (3) refusing to consider employee Colin Cochran for a promotion; (4) prohibiting employee Skretta from working extra shifts; (5) sending employee Westlake home early from a shift;[17] (6) denying employee Westlake the opportunity to train new employees; and (7) denying employee Brisack's May 2022 leave request.[18] We also adopt, for the reasons he states, the judge's dismissals of the allegations that the Respondent violated Section 8(a)(3) and (1) by prohibiting employee Conklin from closing and leaving a store early and withdrawing a promise about conversion of the Williamsville Place store to a drive-through only store.

As explained below, however, we find a violation alleged by the General Counsel but not addressed by the judge. We also adopt the judge's dismissals of two alle-

[16] The Respondent has offered no specific argument concerning the judge's finding that it violated Sec. 8(a)(3) and (1) by reducing the working hours of employees Lerczak and Dragic after they returned from a COVID-19 leave of absence. Accordingly, pursuant to Sec. 102.46(a)(1)(ii) of the Board's Rules and Regulations, we disregard the Respondent's exceptions and affirm the judge's finding of the violation as it concerns these employees.

[17] We agree with the judge that the Respondent retaliated against employee Westlake for his organizing activity, in violation of Sec. 8(a)(3) and (1), by sending him home in the middle of a shift that he had picked up outside of his "home" store. However, to the extent that the judge inadvertently found that this one instance constituted two separate violations, we clarify that it constituted one violation.

[18] In adopting the judge's finding of the violation related to Brisack's May 2022 leave request, we agree with the judge that the General Counsel met her initial burden under *Wright Line* and that the Respondent failed to prove that it would have denied Brisack's leave request even absent her union activity. A few months prior to this incident, the Respondent granted a similar leave request by Brisack for December 2021 under similar circumstances. For the May 2022 leave request, the Respondent asserted that it denied the request because Brisack did not have sufficient leave time accrued at the time she made her request, but the same was true for the earlier leave request that the Respondent granted. In these circumstances, then, we agree with the judge that the Respondent has failed to meet its *Wright Line* defense burden.

Contrary to her colleagues, Chairman McFerran would reverse the judge's finding of this violation. In her view, the Respondent established that it would have denied Brisack's leave request, even absent her union activities, based on Brisack not having sufficient leave time accrued to cover the requested leave period.

gations, but find related violations applying the standard from *Pergament United Sales, Inc.*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). Finally, we reverse the judge's findings of several violations and dismiss the related allegations.

1. Refusal to permit Cochran to train new employees

The General Counsel alleged that the Respondent, starting in about November 2021, violated Section 8(a)(3) and (1) by refusing to allow employee Cochran to train new employees. The judge found the relevant factual predicate for this violation, based in part on his credibility determinations, which, as noted, we do not disturb. *Standard Dry Wall Products*, 91 NLRB at 545. But the judge omitted a corresponding legal analysis from his decision. In view of the judge's factual findings, which we adopt, we find the violation as alleged. Cochran signed the employees' open letter that publicly announced the Union's organizing campaign, was a member of the Union's organizing committee, and led the organizing activity at his store. And Cochran's credited, undisputed testimony was that, after the Respondent became aware of his and his colleagues' organizing activity, he worked shifts when other employees were assigned to provide trainings, and he was vaguely told a scheduling "glitch" prevented him from getting similar training assignments. These facts support the inference that Cochran was denied opportunities to provide trainings because of his organizing activity, and, in light of the record evidence here, we find that the unspecified and unproven "glitch" was a mere pretextual reason for that denial, which fails to satisfy the Respondent's *Wright Line* defense burden.

2. Promoting two employees at the Camp Road store

The judge dismissed the allegation that the Respondent violated Section 8(a)(3) by promoting two employees in the immediate aftermath of the Union's public announcement of its organizing campaign. We adopt this dismissal. As part of her initial burden under *Wright Line*, the General Counsel must show that the employer's action was an *adverse* one, in that "'the individual's prospects for employment or continued employment have been diminished or that some legally cognizable term or condition of employment has changed for the worse.'" *Bellagio, LLC*, 362 NLRB 1426, 1427 (2015) (quoting *Northeast Iowa Telephone Co.*, 346 NLRB 465, 476 (2006)), enf. denied on other grounds 854 F.3d 703 (D.C. Cir. 2017). Here, Camp Road store manager David Fiscus, on the very day the Union went public with its organizing activity, offered promotions to two employees—one of whom was helping to lead the organizing at the store—seemingly out of the blue. The promotions were not adverse as to the two directly affected employees, and there is no evidence that other employees were indirectly negatively affected by the promotions.

Even so, an ostensibly beneficent, nondiscriminatory employer action can, as noted above in connection with the promise of benefits allegations, still be unlawful under Section 8(a)(1). *Exchange Parts Co.*, 375 U.S. at 409-410. Here, based on the timing of the promotions, that one of the employees promoted was particularly active in organizing, and that, on the same day that he made the promotions, the manager also started soliciting employee grievances, we find that the promotions were made to unlawfully dissuade the employees from supporting the Union, in violation of Section 8(a)(1).[19] See *Network Dynamics Cabling*, 351 NLRB at 1424; *United Oil Mfg. Co.*, 254 NLRB 1320, 1320 (1981), enfd. 672 F.2d 1208 (3d Cir. 1982).

3. Investigating Reeve

The judge found that one of the Respondent's managers informed employee Reeve—a leader of the organizing activity at the Camp Road store—that she was under investigation for an offensive term she had used with regard to a support manager on a text message thread that employees active in the organizing effort used among themselves. According to the judge, the manager did not explain to Reeve how she obtained the information, which had been shared on an employee-only chat. The judge thus found that, by creating the impression that Reeve's protected communications with other employees outside the workplace were under surveillance, the Respondent unlawfully discriminated against Reeve by threatening to impose discipline in violation of Section 8(a)(3) and (1).

In the circumstances presented here, we disagree with the judge that creating the impression of surveillance constituted an adverse action for Section 8(a)(3) purposes, and we reverse the judge's finding of that violation and dismiss the allegation. Nevertheless, we find a related violation under Section 8(a)(1).[20] The test for determining whether an employer has created an impression of surveillance, in violation of Section 8(a)(1), is whether an employee "would reasonably assume . . . that their union activities had been placed under surveillance."

[19] Even though the promotions were alleged to have violated Sec. 8(a)(3), it is appropriate for us to find that they violated Sec. 8(a)(1) because such a violation "is closely connected to the subject matter of the complaint and has been fully litigated." See *Pergament*, 296 NLRB at 334.

[20] Applying *Pergament*, 296 NLRB at 334, we find that a Sec. 8(a)(1) impression-of-surveillance violation is both closely connected to the complaint allegations and was fully and fairly litigated.

Flexsteel Industries, Inc., 311 NLRB at 257. Creating such an impression is unlawful because it creates "the fear that members of management are peering over [the] shoulders" of employees participating in union organizing activity, "taking note of who is involved in union activities, and in what particular ways." Id. The manager's reference to something that Reeve said only via an employees-only text thread used for organizing activity, without identifying the source of the information, would reasonably lead Reeve to believe that her and her colleagues' protected organizing activity was under surveillance, which would unlawfully discourage that protected activity in violation of Section 8(a)(1).[21]

4. Shifting authority for hiring, promoting, and scheduling

We reverse the judge's finding that the Respondent violated Section 8(a)(3) and (1) by shifting the authority for hiring, promoting, and scheduling from existing Buffalo-area store managers to recruiting specialists and newly installed support managers. As noted, as part of her initial burden under *Wright Line*, the General Counsel must show that the employer's action was an adverse one, in that "'the individual's prospects for employment or continued employment have been diminished or that some legally cognizable term or condition of employment has changed for the worse.'" *Bellagio, LLC*, 362 NLRB at 1427 (quoting *Northeast Iowa Telephone Co.*, 346 NLRB at 476). Here, the General Counsel has not established, on this record, that the Respondent's decision to shift hiring, promoting, and scheduling authority among its managerial personnel constituted a change, for the worse, in a term or condition of employment. Evidence that actual hiring, promoting, or scheduling decisions changed in a manner that negatively affected employees would be sufficient to find an adverse employment action, but merely redesignating who has authority to make those decisions is insufficient. Accordingly, we reverse the judge's finding of this violation and dismiss the relevant allegation.

[21] Chairman McFerran would decline to find a violation under Sec. 8(a)(3) because, even assuming there were an adverse action, the Respondent demonstrated that it would have investigated Reeve based on apparently legitimate reports of Reeve's use of offensive language, regardless of the monitored text message thread's use for employees' union organizing purposes. She also would decline to find an impression of surveillance violation under Sec. 8(a)(1) because a reasonable employee would expect an employer's inquiry if they used a highly offensive term in conversation with colleagues.

5. Delaying or denying employee transfers and placements

We reverse the judge's findings, and dismiss the relevant complaint allegations, that the Respondent violated Section 8(a)(3) and (1) by delaying or denying employee transfers between or placement in stores.

As for employee O'Hare, she requested a transfer from one store to another, and the Respondent had long delayed in making that transfer before the Respondent was aware of her or other employees' organizing activity. The Respondent's further delay in transferring her once it was aware of her organizing activity and once it had permanently closed her store therefore was consistent with its prior treatment and thus not sufficiently shown to have been discriminatory by the General Counsel.

As for employee Cory Johnson, in the midst of ongoing organizing activity, he was first told that a transfer between Buffalo-area stores would be unproblematic. Soon after, he was abruptly told that such a transfer was unavailable. Even so, he was ultimately approved for a transfer to one of the Respondent's stores in Virginia where employees were also involved in union organizing activity. That store ultimately unionized while Johnson was employed there. That Johnson was permitted to transfer to an outside-of-Buffalo store that, like the Buffalo-area stores, was subject to employees' unionization efforts supports the conclusion that the Respondent's intra-Buffalo denial of his transfer request was not motivated by union animus and thus not sufficiently shown to have been discriminatory by the General Counsel.

As for employee Kaitlyn Baganski, she began her orientation and training program with a few other new hires on January 5, 2022. When this formal training ended on January 14, she did not receive her permanent placement at the Sheridan and Bailey store until February 14. But at least one of the other new hires, who, unlike Baganski, is not alleged to have been actively involved in organizing activity and not alleged to have been a victim of any discrimination, had to wait about two weeks from the end of training to be permanently placed in a store. Although Baganski had to wait longer for her store placement, the fact that other employees not involved in organizing activity similarly had to wait for placement supports the conclusion that the Respondent's delayed placement in Baganski's case was not motivated by union animus and thus not sufficiently shown to have been discriminatory by the General Counsel.

6. Refusing to allow Tarnowski to train new employees

We reverse the judge's finding that the Respondent violated Section 8(a)(3) and (1) by refusing to allow employee Tarnowski to train new employees. Tarnowski

had only just been certified to train new employees when he was told there were no new hires available for him to train, so we lack a reference point prior to his organizing activity to which we can draw a comparison. Moreover, at least one of Tarnowski's pro-Union colleagues was providing training to new employees around the same time that Tarnowski was not being given such opportunities. We find the General Counsel's evidence insufficient to conclude that union animus motivated any differential treatment as to Tarnowski in this regard.

7. Placing Murray on a COVID-19 leave of absence

We reverse the judge's finding that the Respondent violated Section 8(a)(3) and (1) by putting employee Murray on a 10-day COVID-19 leave of absence. When Murray called off sick with a cold on two successive days in November 2021, Murray's store manager—at the direction of the district manager—placed him on a 10-day COVID-19 leave of absence. Absent a pandemic, it might well have been suspicious that the store manager felt compelled to inform the district manager that an employee—who was actively involved in organizing activity—had cold symptoms. But even assuming the General Counsel has carried her initial burden under *Wright Line*, we find, under the circumstances, that the Respondent has established its *Wright Line* defense burden of proving that it would have taken the same adverse action against Murray even absent his organizing activity, as a legitimate precaution against the spread of COVID-19 in a workplace involving the sale of food and beverages to the public.

E. Captive-Audience Meeting-Related Issues

As noted above, in *Amazon.com Services LLC*, 373 NLRB No. 136, slip op. at 1, 8-9, 12-20 (2024), the Board recently overruled *Babcock & Wilcox*, supra, which held that an employer may lawfully hold a mandated meeting during which it attempts to persuade its employees to decline union representation. But that decision applies prospectively only, and thus *Babcock & Wilcox* governs cases like this one that were pending when *Amazon* was decided. Consistent with *Babcock & Wilcox*, we reverse the judge's finding, and dismiss the relevant allegation, that the Respondent violated Section 8(a)(3) and (1) by closing its stores while it held captive-audience meetings. To the extent the governing law permitted the Respondent to hold captive-audience meetings, it follows that the Respondent was entitled to temporarily close its stores to facilitate the holding of such meetings.[22]

The judge also found that the Respondent violated Section 8(a)(3) and (1) by excluding employees Westlake, Michelle Eisen, and Fleischer from its captive-audience meetings. Under pre-*Amazon* Board precedent, employers could exclude certain employees from captive-audience meetings. See, e.g., *Mueller Brass Co.*, 220 NLRB 1127, 1127, 1138-1139 (1975), enf. denied on other grounds 544 F.2d 815 (5th Cir. 1977). Even so, it violated Section 8(a)(3) and (1) for an employer to discriminatorily provide employees whom they compelled to attend such meetings with benefits that they withheld from those employees forbidden from attending. *Wimpey Minerals USA, Inc.*, 316 NLRB 803, 806-807 (1995); *Delchamps, Inc.*, 244 NLRB 366, 367-368 (1979), enfd. 653 F.2d 225 (5th Cir. 1981). Here, we affirm the judge's finding that the Respondent violated Section 8(a)(3) and (1) with respect to employee Westlake in this regard. The Respondent prohibited Westlake from attending a paid captive-audience meeting when his store was closed and he was not on duty time, and the make-up meeting he was allowed to attend fell during his normal working hours, so he was never compensated for the paid off-duty hours meeting to which he was denied access.

By contrast, we reverse the judge's findings that the Respondent violated Section 8(a)(3) and (1) by its treatment of employees Eisen and Fleischer and dismiss the related allegations. Like Westlake, they were forbidden from attending a paid captive-audience meeting when their store was closed and they were not on duty time, but there is no evidence that the make-up meetings that they were directed to attend fell during hours they otherwise would have been working, so there is no evidence that they were not offered equivalent compensation for the paid meeting they were prohibited from attending.

AMENDED CONCLUSIONS OF LAW

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

2. Workers United is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

[22] Member Wilcox would affirm the judge and find that the temporary store closures violated Sec. 8(a)(3) and (1). In her view, the closures were retaliatory and constituted an adverse action because the employees had to forego tips they otherwise would have earned had the stores been open, and in at least one instance they had to pay for parking to attend a meeting.

a. Soliciting grievances from employees and promising to remedy them in order to discourage employees from selecting union representation.

b. Promising employees increased benefits and improved terms and conditions of employment in order to discourage employees from selecting union representation.

c. Promising to renovate stores in order to discourage employees from selecting union representation.

d. Announcing seniority-based wage increases in order to discourage employees from selecting union representation.

e. Promising to improve store conditions, including by upgrading and replacing equipment, in order to discourage employees from selecting union representation.

f. Creating the impression that it is engaged in surveillance of its employees' union or other protected concerted activities, including by photographing employees while wearing union paraphernalia, stationing additional managers at stores, monitoring employees' conversations on company headsets, scheduling managers to work during all operational hours at stores, having high-ranking company officials make repeated and unprecedented visits to stores, and investigating employees for comments in employees-only forums.

g. Prohibiting employees from talking about their wages.

h. Transferring employees to stores with upcoming union votes to dilute prounion support in the election.

i. Hiring additional employees in stores with upcoming union votes to dilute prounion support in the election.

j. Overstaffing stores with upcoming union votes to dilute prounion support in the election.

k. Coercively interrogating employees about their union activities or support.

l. Restricting employees from posting union literature in employee break areas where the posting of other types of literature is permitted.

m. Hiring additional employees, in response to grievances that were unlawfully solicited, in order to discourage employees from selecting union representation.

n. Centralizing the training of new hires, in response to grievances that were unlawfully solicited, in order to discourage employees from selecting union representation.

o. Making facilities and equipment upgrades, in response to grievances that were unlawfully solicited, in order to discourage employees from selecting union representation.

p. Permitting shift supervisors to disable mobile ordering, close store cafés, and close stores, in response to grievances that were unlawfully solicited, in order to discourage employees from selecting union representation.

q. Authorizing additional hours of labor or offering additional hours to employees, in response to grievances that were unlawfully solicited, in order to discourage employees from selecting union representation.

r. Arranging for additional training, in response to grievances that were unlawfully solicited, in order to discourage employees from selecting union representation.

s. Increasing the timeliness of the posting of schedules, in response to grievances that were unlawfully solicited, in order to discourage employees from selecting union representation.

t. Threatening employees with the loss of the ability for managers to work on the floor of their stores if they select the Union as their bargaining representative.

u. Threatening that employees would not be able to pick up shifts at other stores if they select the Union as their bargaining representative.

v. Telling employees that it will not offer additional benefits in contract negotiations with the Union if they select the Union as their bargaining representative.

w. Threatening employees with the withholding of new benefits if they select the Union as their bargaining representative.

x. Threatening employees with discipline for engaging in protected concerted activities.

y. Threatening employees with reprisals to discourage employees from selecting union representation.

z. Instructing employees not to allow prounion employees to pick up shifts at their stores.

aa. Instructing employees to engage in surveillance of other employees' union activities.

bb. Prohibiting employees from discussing the Union with other employees while permitting conversations with other employees about other nonwork subjects.

cc. Prohibiting employees from discussing the Union with customers while permitting conversations with customers about other nonwork subjects.

dd. Threatening employees that they will not receive raises if they selected the Union as their bargaining representative.

ee. Threatening employees with discipline or reprisal for raising employees' health and safety concerns with management.

ff. Promoting employees in order to discourage them from selecting union representation.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by.

a. More strictly enforcing its workplace rules and policies because of its employees' support for and activities on behalf of the Union.

b. More strictly enforcing the Dress Code & Personal Appearance policy because of its employees' support for and activities on behalf of the Union.

c. More strictly enforcing the Attendance & Punctuality policy because of its employees' support for and activities on behalf of the Union.

d. More strictly enforcing the Soliciting/Distributing Notices policy because of its employees' support for and activities on behalf of the Union.

e. More strictly enforcing the COVID log policy because of its employees' support for and activities on behalf of the Union.

f. More strictly enforcing policies regarding the making of drinks because of its employees' support for and activities on behalf of the Union.

g. More strictly enforcing the policy concerning vulgar and profane language because of its employees' support for and activities on behalf of the Union.

h. Reducing the operational hours of stores because of its employees' support for and activities on behalf of the Union.

i. Temporarily closing stores because of its employees' support for and activities on behalf of the Union.

j. Permanently closing the Walden Galleria kiosk because of its employees' support for and activities on behalf of the Union.

k. Imposing more onerous and rigorous terms and conditions of employment because of its employees' support for and activities on behalf of the Union.

l. Reducing the hours of work of employees because of their support for and activities on behalf of the Union.

m. Disconnecting direct phone lines to stores because of its employees' support for and activities on behalf of the Union.

n. Instituting a requirement that employees stand in line to order food and drinks during their breaks because of its employees' support for and activities on behalf of the Union.

o. Instituting a requirement that employees maintain minimum availability to retain employment because of its employees' support for and activities on behalf of the Union.

p. Prohibiting employees from using a third-party chat platform to switch shifts because of their support for and activities on behalf of the Union.

q. Refusing to permit shift supervisors to close the cafés of stores because of its employees' support for and activities on behalf of the Union.

r. Refusing to permit shift supervisors to disable mobile ordering because of its employees' support for and activities on behalf of the Union.

s. Refusing to consider employees for promotion because of their support for and activities on behalf of the Union.

t. Replacing employees' shift supervisor shifts with barista shifts because of their support for and activities on behalf of the Union.

u. Disciplining employees because of their support for and activities on behalf of the Union.

v. Discharging employees Cassie Fleischer, Angel Krempa, Nathan Tarnowski, Edwin Park, Brian Nuzzo, and Daniel Rojas Jr. because of their support for and activities on behalf of the Union.

w. Refusing to allow prounion employees to train new employees.

x. Randomizing employees' shifts because of their support for and activities on behalf of the Union.

y. Refusing to permit prounion employees to attend paid antiunion meetings.

z. Sending employees home prior to the end of their shifts because of their support for and activities on behalf of the Union.

aa. Prohibiting employees from picking up shifts at other stores because of their support for and activities on behalf of the Union.

bb. Denying employees' leave requests because of their support for and activities on behalf of the Union.

cc. Banning employees from all of the Respondent's stores because of their support for and activities on behalf of the Union.

dd. Constructively discharging employee Kellen Higgins by enforcing a new minimum availability requirement because of his support for and activities on behalf of the Union.

5. The Respondent violated Section 8(a)(4) and (1) of the Act by:

a. Disciplining employee Angel Krempa because Krempa gave testimony to the National Labor Relations Board.

b. Discharging employee Angel Krempa because Krempa gave testimony to the National Labor Relations Board.

6. The Respondent violated Section 8(a)(5) and (1) of the Act by:

a. Changing employees' terms and conditions of employment by implementing a minimum availability policy as to employees in bargaining units represented by the Union without first notifying the Union and giving it an opportunity to bargain.

b. Making a material change in disciplinary rules and enforcing those changed rules against employees in bargaining units represented by the Union without first notifying the Union and giving it an opportunity to bargain.

7. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. The Respondent has not otherwise violated the Act as alleged in the complaint.

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist from engaging in those practices and to take certain affirmative action designed to effectuate the policies of the Act. In the sections below, we address several aspects of the judge's recommended remedy.[23] As to the make-whole relief ordered by the judge, we amend the remedy to conform to our findings and the Board's standard remedial language. Next, we explain our agreement with the judge's recommendation for a bargaining order at the Respondent's Camp Road store. Thereafter, we find, in agreement with the judge, that a number of other remedies are appropriate given the severity and pervasiveness of the Respondent's violations of the Act.

I. MAKE-WHOLE RELIEF

The Respondent, having discriminatorily discharged employees Cassie Fleischer, Daniel Rojas Jr., Edwin Park, Brian Nuzzo, Nathan Tarnowski, Angel Krempa, and Kellen Higgins, must offer them reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits. 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).

The Respondent shall also make employees Mikaela Jazlyn Brisack, Colin Cochran, Róisín Doherty, Danka Dragic, Cassie Fleischer, Angel Krempa, Caroline Lerczak, Kellen Higgins, Brian Murray, Nicole Norton, Brian Nuzzo, Edwin Park, Gianna Reeve, Daniel Rojas Jr., James Skretta, Nathan Tarnowski, William Westlake, and all other unit employees affected by its unlawful conduct whole for any loss of earnings and other benefits. This make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, compounded daily as prescribed in *Kentucky River Medical Center.*

In addition, in accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall also compensate all discriminatees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful adverse actions against them, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.[24] Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, compounded daily as prescribed in *Kentucky River Medical Center*.

The Respondent shall also compensate the discriminatees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and shall file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay allocation report, the Respondent shall file with the Regional Director for Region 3 a copy of affected employees' corresponding W-2 forms reflecting the backpay award. *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

II. *GISSEL* BARGAINING ORDER AT THE CAMP ROAD STORE

For the reasons stated by the judge, we agree that a bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), is warranted at the Camp Road store. In addition to the various unfair labor practices that the Respondent perpetrated specifically at the Camp Road store—which included "hallmark" violations like a coercive grant of benefits, *Horizon Air Services*, 272 NLRB 243, 243 (1984), enfd. 761 F.2d 22 (1st Cir. 1985), a retaliatory demotion, id., and a threat of a loss of benefits, *Cogburn Healthcare Center, Inc.*, 335 NLRB 1397, 1400 (2001), enf. denied in relevant part 437 F.3d 1266 (D.C. Cir. 2006)—the overwhelming number and relative severity of unfair labor practices that the Respondent

[23] In view of the finding that the Respondent discriminatorily closed the Walden Galleria kiosk, the Respondent had the "burden to demonstrate the affirmative defense of undue hardship" to avoid a remedial order that the store be reopened to restore the status quo ante. *RAV Truck & Trailer Repairs, Inc.*, 372 NLRB No. 25, slip op. at 5 (2022). In the absence of any such argument by the Respondent, we agree with the judge that the Respondent is required to reopen the Walden Galleria kiosk.

[24] For the reasons set forth in *Airgas USA*, *LLC,* 373 NLRB No. 102, slip op. at 1 fn. 2 (2024), the Board's decision in *Thryv* remains valid precedent.

perpetrated over a period of months across its Buffalo-area stores further supports a bargaining order specific to the Camp Road store. These unfair labor practices included the discriminatory discharges of multiple open and active Union supporters, which "is one of the most flagrant means by which an employer can hope to dissuade employees from selecting a bargaining representative because no event can have more crippling consequences to the exercise of Section 7 rights than the loss of work." *Mid-East Consolidation Warehouse*, 247 NLRB 552, 560 (1980). We infer that the coercive tendency of these firings—not to mention the other violations that the Respondent committed—extended across the Buffalo-area stores, including at Camp Road, given that employees across the stores "had the same complaints regarding wages, hours, and working conditions" and "were in contact with each other." *California Gas Transport, Inc.*, 347 NLRB 1314, 1325 (2006) (finding that an employer's unfair labor practices perpetrated against employees at one facility provided support for a bargaining order on behalf of employees at another facility), enfd. 507 F.3d 847 (5th Cir. 2007). Moreover, the Respondent's response to its employees' organizing activity was "overt and highly publicized," *Holly Farms Corp.*, 311 NLRB 273, 282 (1993), enfd. 48 F.3d 1360 (4th Cir. 1995), and was "centrally controlled," id. at 282, as was apparent from executive vice president Williams becoming a fixture at Buffalo-area stores and former CEO Howard Schultz convening a mandatory in-person meeting with all Buffalo-area employees on the eve of the first representation elections. At that mass meeting, Schultz notably made the same sort of unlawful implied promises to remedy grievances that the Respondent's lower-ranking managers repeatedly made within individual stores.

We find that a bargaining order was necessary at the time the Respondent committed its unfair labor practices, and it remains necessary today. The Respondent has not argued that the passage of time or employee turnover at the Camp Road store militates against a bargaining order. Moreover, the severity and pervasiveness of the Respondent's unfair labor practices would reasonably tend to cause employees to fear retaliation if they were to engage in union activity or if the Union were to prevail in an election. Traditional remedies—like an order to cease and desist committing unfair labor practices, post a notice, and reinstate unlawfully terminated Buffalo-area employees—are therefore inadequate to erase the effects of the Respondent's conduct and ensure a fair rerun election. Accordingly, we judge the majority sentiment in favor of the Union initially expressed by the Camp Road employees' union authorization cards a better reflection of employee sentiment than would be the results of a rerun election tainted by the reasonable fear of retaliation. Reflecting that sentiment through a bargaining order thus promotes, rather than hinders, employees' exercise of their Section 7 right to choose their collective-bargaining representative. In addition, the duration of the bargaining order is limited to a period no longer than is reasonably necessary to remedy the ill effects of the violations. See *Spike Enterprise, Inc.*, 373 NLRB No. 41, slip op. at 10 (2024). This ensures that the Section 7 rights of employees who oppose the Union are still protected pursuant to the decertification procedures under Section 9(c)(1) of the Act once a reasonable period of time has elapsed to afford the collective bargaining relationship an opportunity to succeed.[25]

III. ADDITIONAL REMEDIES

As the severity and pervasiveness of the Respondent's unfair labor practices demonstrate a general disregard for its employees' fundamental statutory rights in its Buffalo-area stores, we agree with the judge that a broad order, requiring and reminding the Respondent to cease interfering with, restraining, or coercing its employees in their exercise of Section 7 rights in *any* manner, is warranted in this case as to stores in the Buffalo area. *Hickmott Foods*, 242 NLRB 1357 (1979). Where a respondent's conduct meets the standard for a broad order—i.e., where a proclivity to violate the Act has been established or where widespread or egregious misconduct demonstrates a general disregard for employees' Section 7 rights—the Board must order commensurate remedies to "effectuate the policies of th[e] Act" (in the words of Section 10(c) of the Act). Cases in which the broad-order standard is met necessarily involve circumstances that would lead employees to reasonably believe that the respondent does not respect their rights. In such circumstances, employees will reasonably tend to fear that the respondent will continue to disregard the Act; consequently, to ensure that they are not chilled from exercising their rights under the Act, employees will need extra information about those rights and credible assurances that the respondent

[25] Because the General Counsel did not allege or argue that the Respondent committed a generalized failure to bargain under Sec. 8(a)(5), we do not consider whether a bargaining order is warranted in this case under the standard announced in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130, slip op. at 35 (2023). See also *Spike Enterprise, Inc.*, 373 NLRB No. 41, slip op. at 8 fn. 26.

Moreover, the judge did not abuse his discretion in denying the Union's motion to reopen the record to introduce evidence in support of a bargaining order concerning the Walden & Anderson store. See *Centinela Hospital Medical Center*, 363 NLRB 411, 411 fn. 1 (2015). In so finding, we rely solely on the untimeliness of the motion and the Union's failure to explain why it did not file the motion earlier.

is bound by the Act and not free to violate employees' rights. *Noah's Ark Processors, LLC d/b/a WR Reserve*, 372 NLRB No. 80, slip op. at 5 (2023), enfd. 98 F.4th 896 (8th Cir. 2024). To ensure that the employees adequately receive such information, the Board may evaluate the nature, severity, and extent of a respondent's violations and consider and order a range of remedies.

In view of the severity and pervasiveness of the Respondent's violations in the circumstances of this case, we will order that the Respondent—in addition to the customary requirement that it post the notice, which is a Respondent-signed document that details the unfair labor practices from which it will cease and desist and further details the affirmative actions it will take to ameliorate the harms caused by those practices—also must post an Explanation of Rights. We will order that these documents be posted in these stores for a period of one year to mitigate the chill employees have experienced in their willingness to exercise their rights in view of their knowledge of these violations. See *Noah's Ark Processors, LLC d/b/a WR Reserve*, 372 NLRB No. 80, slip op. at 8, 11–12. We will also order the Respondent to distribute electronic copies of these documents not just to its employees but also to its supervisors and managers, whom, as noted, the Respondent has strategically deployed to carry out its unlawful tactics. Such distribution will help ensure that supervisors and managers are aware of employees' rights under the Act and of their obligations to respect those rights. See, e.g., *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, slip op. at 14 (2018), enfd. mem. in relevant part 803 Fed. Appx. 876 (6th Cir. 2020); *HTH Corp.*, 361 NLRB 709, 716 (2014), enfd. in relevant part 823 F.3d 668 (D.C. Cir. 2016).

We will also require one of the Respondent's high-ranking management officials or, in the alternative, a Board agent in the presence of such an official, to read the notice and an Explanation of Rights at a meeting with employees. This remedy is warranted when, as here, "the employer's violations are so numerous and serious that a reading of the notice" can help "dissipate the chilling effect of the violations on employees' willingness to exercise their Section 7 rights." *Amerinox Processing, Inc.*, 371 NLRB No. 105, slip op. at 2 (2022), enfd. mem. No. 22-1158, 2023 WL 2818503 (D.C. Cir. 2023).[26]

In view of the remedies provided above, we decline the judge's recommendation that ongoing training concerning employees' rights under the Act be provided to the Respondent's employees, supervisors, and managers. We are of the view that the ordered measures are sufficient to apprise employees, supervisors, and managers of their rights and responsibilities and do not think that, at this juncture, mandated training is necessary.

Also contrary to the judge's recommendation, we find that ordering the Respondent to provide the Union with employee contact information is unwarranted. The record does not reflect that the Union had difficulty communicating with the Respondent's employees, and neither the General Counsel nor the Union directs us to any such evidence. Accordingly, this recommended remedy is not tailored to alleviate the harms that the Respondent caused, so we will not impose it.[27]

We also decline at this time the judge's recommendation to require the Respondent to grant Board agents access to its facilities and records to determine compliance with other aspects of our Order. A visitation remedy is warranted where there is "a likelihood that a respondent will fail to cooperate or otherwise attempt to evade compliance" with our orders. *Noah's Ark Processors, LLC d/b/a WR Reserve*, 372 NLRB No. 80, slip op. at 9. While we are of the view that the severity and pervasiveness of the Respondent's unfair labor practices throughout its Buffalo-area stores will have created a lingering chill as to employees' exercise of their Section 7 rights that the various remedies we order are aimed at dissipating, there has been no showing of a likelihood that the Respondent will fail to comply with those remedies once ordered to do so. For similar reasons, we decline the judge's recommendation to require the Respondent to provide the Union access to the Respondent's bulletin boards and all other places where notices to employees are customarily posted. Although at one store the Respondent unlawfully removed union-related literature from areas where non-work-related literature was regularly located, we are of the view that the order directing the Respondent to cease and desist from this relatively isolated conduct remedies the harm and will prevent its reoccurrence.[28]

[26] We will also require that a Board agent distribute a copy of the notice and explanation of rights to employees at the meeting before the reading. See *Noah's Ark Processors, LLC d/b/a WR Reserve*, 372 NLRB No. 80, slip op. at 6-7.

[27] We also decline the judge's recommendation to require the Respondent to provide the Union with equal time to address employees if the Respondent convenes them for captive-audience meetings. Under our recent decision in *Amazon.com Services LLC*, 373 NLRB No. 136, slip op. at 1, 8-9, 12-20, captive-audience meetings are now unlawful.

[28] We likewise decline to order the nationwide notice posting remedy recommended by the judge and the additional remedies requested by the Union because, at this time and in the specific circumstances of this case, they are not necessary to remedy the unfair labor practices found.

ORDER

The National Labor Relations Board orders that the Respondent, Starbucks Corporation, Buffalo, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Soliciting grievances from employees and promising to remedy them in order to discourage employees from selecting union representation.

b. Promising employees increased benefits and improved terms and conditions of employment in order to discourage employees from selecting union representation.

c. Creating the impression that it is engaged in surveillance of its employees' union or other protected concerted activities, including by taking photographs of employees wearing union paraphernalia, stationing support managers at all stores, having high-ranking officials make unprecedented and repeated visits to each store, scheduling managers at stores during all operational hours, monitoring employees' conversations on headsets, and investigating employees for comments in employees-only forums.

d. Prohibiting employees from talking about their wages.

e. Coercively interrogating employees about their union activities or support.

f. Restricting employees from posting union literature in employee break areas where the posting of other nonwork literature is permitted.

g. Transferring employees to, hiring new employees to work in, and overstaffing stores with upcoming representation elections to dilute prounion support in the elections.

h. Granting and increasing benefits in order to discourage employees from selecting union representation.

i. Promoting employees in order to discourage them from selecting union representation.

j. Remedying or attempting to remedy grievances that were unlawfully solicited, including by authorizing additional hours of labor, offering additional hours of work, arranging for additional training, hiring additional employees, making facilities and equipment upgrades, permitting shift supervisors to shut down mobile ordering, permitting shift supervisors to close store cafés, and increasing the frequency with which schedules are posted, to discourage employees from selecting union representation.

k. Threatening employees with the loss of benefits if they select the Union as their bargaining representative.

l. Threatening employees with discipline for engaging in protected concerted activities.

m. Threatening employees with reprisals to discourage employees from selecting union representation.

n. Instructing employees not to allow prounion employees to pick up shifts at their stores.

o. Instructing employees to surveil coworkers who engage in union activity.

p. Prohibiting employees from talking about the Union with other employees and customers while permitting employees to talk with other employees and customers about other nonwork subjects.

q. Threatening employees with the loss of the ability to have managers work alongside them on the floor of stores if they select the Union as their bargaining representative.

r. Threatening employees that they would not receive additional wage increases and benefits in contract negotiations and that future benefits would be withheld if they select the Union as their bargaining representative.

s. Threatening employees with the loss of the ability to pick up shifts if they select the Union as their bargaining representative.

t. Threatening employees with discipline or reprisal for raising employees' health and safety concerns with management.

u. More strictly enforcing its workplace rules and policies because of its employees' support for and activities on behalf of the Union.

v. Discharging, issuing warnings to, retaliating against, or otherwise discriminating against employees because of their support for and activities on behalf of the Union, including by reducing the operational hours of its stores, temporarily and permanently closing its stores, and increasing employees' required minimum availability.

w. Imposing more onerous and rigorous terms and conditions of employment on employees because of their support for and activities on behalf of the Union, including by more strictly enforcing its policies for making drinks, disconnecting the direct telephone line for its stores, requiring that employees stand in the customer ordering line to order food while working, requiring that employees offer minimum scheduling availability to retain employment, prohibiting employees from using a third-party group chat to switch shifts, and refusing to permit shift supervisors to close the cafés of stores or disable mobile ordering.

x. Retaliating against employees because of their support for and activities on behalf of the Union, including by refusing to allow them to train new employees, sending them home prior to the end of their shifts, randomizing their shifts, reducing their work hours, refusing to consider them for a promotion to shift supervisor, replac-

ing their shift supervisor shifts with barista shifts, refusing to permit them to attend paid antiunion meetings, refusing to allow them to work shifts at another store, denying their requests to reduce their availability, denying their leave requests, and banning them from all of the Respondent's stores.

y. Disciplining and discharging employees because of their support for and activities on behalf of the Union.

z. Disciplining and discharging employees because they testified at a Board hearing.

aa. Constructively discharging employees by enforcing a new minimum availability policy because of their support for and activities on behalf of the Union.

bb. Unilaterally implementing changes affecting Union-represented employees' wages, hours, or other terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

cc. Discharging or otherwise disciplining Union-represented employees without first notifying the Union and giving it an opportunity to bargain.

dd. In any other 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 actions necessary to effectuate the policies of the Act.

a. Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit (Elmwood Unit):

> All full-time and part-time Baristas and Shift Supervisors employed by the Respondent at its 933 Elmwood Avenue, Buffalo, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

b. Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit (Transit & French Unit):

> All full-time and regular part-time Baristas and Shift Supervisors employed by the Respondent at its 4770 Transit Road, Depew, New York facility, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

c. On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit (Camp Road Unit) concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time Baristas and Shift Supervisors employed by the Respondent at its 5120 Camp Road, Hamburg, New York facility, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

d. On request, rescind all terms and conditions of employment which it unlawfully implemented or unlawfully eliminated on or after August 23, 2021, but nothing in this Order is to be construed as requiring the Respondent to rescind any unilateral changes that benefited the unit employees without a request from the Union.

e. On request, restore to unit employees the terms and conditions of employment that were applicable prior to August 23, 2021, and continue them in effect until the parties either reach an agreement or a good-faith impasse in bargaining.

f. Make whole the unit employees for any losses suffered by reasons of the unlawful unilateral changes in terms and conditions of employment on or after August 23, 2021, plus interest, and for any other direct or foreseeable pecuniary harms suffered as a result of those unlawful unilateral changes, in the manner set forth in the amended remedy section of this decision.

g. Within 14 days from the date of this Order, offer Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

h. Make Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski whole, in the manner set forth in the amended remedy section of this decision, for any loss of earnings and other benefits and for any other direct or foreseeable pecuniary harms suffered as a result of their unlawful discharges.

i. Make Mikaela Jazlyn Brisack, Colin Cochran, Róisín Doherty, Danka Dragic, Cassie Fleischer, Angel Krempa, Caroline Lerczak, Kellen Higgins, Brian Murray, Nicole Norton, Brian Nuzzo, Edwin Park, Gianna Reeve, Daniel Rojas Jr., James Skretta, Nathan Tarnowski, and William Westlake whole, in the manner set forth in the amended remedy section of this decision, for any loss of earnings and other benefits and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against them.

j. Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of

Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski and within three days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

k. Rescind the verbal warnings issued to Danka Dragic, Angel Krempa, Nicole Norton, Gianna Reeve, and James Skretta.

l. Within 14 days from the date of this Order, remove from its files any reference to the verbal warnings issued to Danka Dragic, Angel Krempa, Nicole Norton, Gianna Reeve, and James Skretta and within three days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

m. Rescind the written warnings issued to Róisín Doherty, Brian Murray, Nicole Norton, Edwin Park, James Skretta, and Angel Krempa.

n. Within 14 days from the date of this Order, remove from all files any reference to the written warnings issued to Róisín Doherty, Brian Murray, Nicole Norton, Edwin Park, James Skretta, and Angel Krempa and within three days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

o. Rescind the documented coachings issued to Angel Krempa, Daniel Rojas Jr., and Edwin Park.

p. Within 14 days from the date of this Order, remove from all files any reference to the documented coachings issued to Angel Krempa, Daniel Rojas Jr., and Edwin Park and within three days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

q. Within 14 days from the date of this Order, remove from all files any reference to the sending home early of Brian Murray, Angel Krempa, and William Westlake and within three days thereafter notify them in writing that this has been done and that those occurrences will not be used against them in any way.

r. Within 14 days from the date of this Order, remove from all files any reference to the reduction in hours of Danka Dragic and Caroline Lerczak and within three days thereafter notify them in writing that has been done and that those reductions will not be used against them in any way.

s. Within 14 days from the date of this Order, remove from all files any reference to the refusal to permit Colin Cochran and William Westlake to train new employees and within three days thereafter notify them in writing that this has been done and that those refusals will not be used against them in any way.

t. Compensate Mikaela Jazlyn Brisack, Colin Cochran, Róisín Doherty, Danka Dragic, Cassie Fleischer, Angel Krempa, Caroline Lerczak, Kellen Higgins, Brian Murray, Nicole Norton, Brian Nuzzo, Edwin Park, Gianna Reeve, Daniel Rojas Jr., James Skretta, Nathan Tarnowski, and William Westlake for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 3, 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.

u. Within a reasonable period of time, reopen and restore the operation of the Walden Galleria kiosk as it existed on September 8, 2021.

v. Following the restoration of the Walden Galleria kiosk, offer any employees as of September 8, 2021 full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and without prejudice to their preference to remain in their current positions at another of the Respondent's stores.

w. Make the Walden Galleria kiosk employees as of September 8, 2021 whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against them, in the manner set forth in the amended remedy section of this decision.

x. Compensate any Walden Galleria kiosk employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 3, 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.

y. Make employees whole for any loss of earnings and other benefits resulting from the unlawful temporary store closures, and for any other direct or foreseeable pecuniary harms suffered as a result of that discrimination against them, in the manner set forth in the amended remedy section of this decision.

z. File with the Regional Director for Region 3, 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 forms reflecting the backpay award.

aa. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an elec-

tronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

bb. Within 14 days after service by the Region, post at its Buffalo-area facilities copies of the attached notice marked "Appendix A" and the attached Explanation of Rights marked "Appendix B."[29] Copies of the notice and Explanation of Rights, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 1 year in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper documents, the documents 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 documents shall also be distributed electronically to its supervisors and managers. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed a facility, 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 that facility since August 23, 2021.

cc. Hold a meeting or meetings during work hours at the Buffalo-area facilities involved in this case and schedule the meeting or meetings to ensure the widest possible employee attendance. At the meeting or meetings have a high-ranking management official or, in the alternative at the Respondent's option, a Board agent in the presence of such an official, and, if the Union so desires, a union representative, read the attached notice marked "Appendix A" and the attached Explanation of Rights marked "Appendix B" to employees. A copy of the notice and the Explanation of Rights will be distributed by a Board agent during this meeting or meetings to each employee in attendance before the notice and Explanation of Rights are read.

dd. Within 21 days after service by the Region, file with the Regional Director for Region 3 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 election conducted in Case 03—RC—282127 on December 9, 2021, shall be set aside and that the petition shall be dismissed.

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

Dated, Washington, D.C. December 16, 2024

_____
Lauren McFerran, Chairman

_____
David M. Prouty, Member

_____
Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

[29] If a facility is open and staffed by a substantial complement of employees, the documents must be posted and the notice and Explanation of Rights read within 14 days after service by the Region. If a facility is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the documents must be posted and the notice and Explanation of Rights read within 14 days after the facility reopens and a substantial complement of employees has 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 documents must also be posted by such electronic means within 14 days after service by the Region. If the documents to be physically posted were posted electronically more than 60 days before their physical posting, they shall state at the bottom that "This document is the same document 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."

WE WILL NOT solicit grievances from you and promise to remedy them to discourage you from selecting union representation.

WE WILL NOT promise you increased benefits and improved terms and conditions of employment in order to discourage you from selecting union representation.

WE WILL NOT create the impression that we are engaged in surveillance of your union or other protected concerted activities, including by taking photographs of you wearing union paraphernalia, stationing support managers at all stores, having high-ranking officials make unprecedented and repeated visits to each store, scheduling managers at stores during all operational hours, monitoring your conversations on headsets, and investigating employees for comments in employees-only forums.

WE WILL NOT prohibit you from talking about your wages.

WE WILL NOT coercively interrogate you about your union activities or support.

WE WILL NOT restrict you from posting union literature in employee break areas where the posting of other nonwork literature is permitted.

WE WILL NOT transfer you to, hire new employees to work in, or overstaff stores with upcoming representation elections to dilute prounion support in the elections.

WE WILL NOT grant or increase benefits to discourage you from selecting union representation.

WE WILL NOT promote you to discourage you from selecting union representation.

WE WILL NOT remedy or attempt to remedy grievances that were unlawfully solicited, including by authorizing additional hours of labor, offering additional hours of work, arranging for additional training, hiring additional employees, making facilities and equipment upgrades, permitting shift supervisors to shut down mobile ordering, permitting shift supervisors to close store cafés, and increasing the frequency with which schedules are posted, to discourage you from selecting union representation.

WE WILL NOT threaten you with the loss of benefits if you select the Union as your bargaining representative.

WE WILL NOT threaten you with discipline for engaging in protected concerted activities.

WE WILL NOT threaten you with reprisals to discourage you from selecting union representation.

WE WILL NOT instruct you not to allow prounion employees to pick up shifts at your stores.

WE WILL NOT instruct you to surveil employees who engage in union activity.

WE WILL NOT threaten you with more onerous and rigorous terms and conditions of employment if you select the Union as your bargaining representative.

WE WILL NOT prohibit you from talking about the Union with other employees and customers while permitting you to talk with other employees and customers about other nonwork subjects.

WE WILL NOT threaten you with the loss of the ability to have managers work alongside you on the floor of stores if you select the Union as your bargaining representative.

WE WILL NOT threaten you that you will not receive additional wage increases and benefits in contract negotiations and that future benefits will be withheld if you select the Union as your bargaining representative.

WE WILL NOT threaten you with the loss of the ability to pick up shifts if you select the Union as your bargaining representative.

WE WILL NOT more strictly enforce workplace rules and policies because of your support for and activities on behalf of the Union.

WE WILL NOT discharge, issue warnings to, retaliate against, or otherwise discriminate against you because of your support for and activities on behalf of the Union, including by reducing the operational hours of our stores, temporarily and permanently closing our stores, and increasing your required minimum availability.

WE WILL NOT impose more onerous and rigorous terms and conditions of employment on you because of your support for and activities on behalf of the Union, including by more strictly enforcing our policies for making drinks, disconnecting the direct telephone line for our stores, requiring that you stand in the customer ordering line to order food while working, requiring that you offer minimum scheduling availability to retain employment, prohibiting you from using a third-party group chat to switch shifts, and refusing to permit shift supervisors to close the cafés of stores or disable mobile ordering.

WE WILL NOT retaliate against you because of your support for and activities on behalf of the Union, including by refusing to allow you to train new employees, sending you home prior to the end of your shifts, randomizing your shifts, reducing your work hours, refusing to consider you for a promotion to shift supervisor, replacing your shift supervisor shifts with barista shifts, refusing to permit you to attend paid antiunion meetings, refusing to allow you to work shifts at another store, denying your requests to reduce your availability, denying your leave requests, and banning you from all of our stores.

WE WILL NOT discipline and discharge you because of your support for and activities on behalf of the Union.

WE WILL NOT discipline and discharge you because you testify at a Board hearing.

WE WILL NOT constructively discharge you by enforcing a new minimum availability policy because of your support for and activities on behalf of the Union.

WE WILL NOT unilaterally implement changes affecting your wages, hours, or other terms and conditions of employment, if you are a Union-represented employee, without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT discharge or otherwise discipline you, if you are a Union-represented employee, without first notifying the Union and giving it an opportunity to bargain.

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

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit (Elmwood Unit):

> All full-time and part-time Baristas and Shift Supervisors employed by the Respondent at its 933 Elmwood Avenue, Buffalo, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit (Transit & French Unit):

> All full-time and regular part-time Baristas and Shift Supervisors employed by the Respondent at its 4770 Transit Road, Depew, New York facility, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (Camp Road Unit) concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time Baristas and Shift Supervisors employed by the Respondent at its 5120 Camp Road, Hamburg, New York facility, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL, on request, rescind all terms and conditions of employment which we unlawfully implemented or unlawfully eliminated on or after August 23, 2021.

WE WILL, on request, restore to Elmwood, Transit & French, and Camp Road Unit employees the terms and conditions of employment that were applicable prior to August 23, 2021, and continue them in effect until we and the Union either reach an agreement or a good-faith impasse in bargaining.

WE WILL make whole the unit employees for any losses suffered by reasons of the unlawful unilateral changes in terms and conditions of employment on or after August 23, 2021, plus interest, and for any other direct or foreseeable pecuniary harms suffered as a result of those unlawful unilateral changes.

WE WILL, within 14 days from the date of the Board's Order, offer Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski whole for any loss of earnings and other benefits, less any net interim earnings, plus interest, and for any other direct or foreseeable pecuniary harms, including reasonable search-for-work and interim employment expenses, plus interest, suffered as a result of our unlawful discharges of them.

WE WILL make Mikaela Jazlyn Brisack, Colin Cochran, Róisín Doherty, Danka Dragic, Cassie Fleischer, Angel Krempa, Caroline Lerczak, Kellen Higgins, Brian Murray, Nicole Norton, Brian Nuzzo, Edwin Park, Gianna Reeve, Daniel Rojas Jr., James Skretta, Nathan Tarnowski, and William Westlake whole for any loss of earnings and other benefits, plus interest, suffered as a result of our discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski and within three days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL rescind the verbal warnings issued to Danka Dragic, Angel Krempa, Nicole Norton, Gianna Reeve, and James Skretta.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the verbal warnings issued to Danka Dragic, Angel Krempa, Nicole Norton, Gianna Reeve, and James Skretta and within three days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

WE WILL rescind the written warnings issued to Róisín Doherty, Brian Murray, Nicole Norton, Edwin Park, James Skretta, and Angel Krempa.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the written warnings issued to Róisín Doherty, Brian Murray, Nicole Norton, Edwin Park, James Skretta, and Angel Krempa and within three days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

WE WILL rescind the documented coachings issued to Angel Krempa, Daniel Rojas Jr., and Edwin Park.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the documented coachings issued to Angel Krempa, Daniel Rojas Jr., and Edwin Park and within three days thereafter notify them in writing that this has been done and that the warnings will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the sending home early of Brian Murray, Angel Krempa, and William Westlake and within three days thereafter notify them in writing that this has been done and that those occurrences will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the reduction in hours of Danka Dragic and Caroline Lerczak and within three days thereafter notify them in writing that has been done and that those reductions will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the refusal to permit Colin Cochran and William Westlake to train new employees and within three days thereafter notify them in writing that this has been done and that those refusals will not be used against them in any way.

WE WILL compensate Mikaela Jazlyn Brisack, Colin Cochran, Róisín Doherty, Danka Dragic, Cassie Fleischer, Angel Krempa, Caroline Lerczak, Kellen Higgins, Brian Murray, Nicole Norton, Brian Nuzzo, Edwin Park, Gianna Reeve, Daniel Rojas Jr., James Skretta, Nathan Tarnowski, and William Westlake for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 3, 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.

WE WILL, within a reasonable period of time, reopen and restore the operation of the Walden Galleria kiosk as it existed on September 8, 2021.

WE WILL, following the restoration of the Walden Galleria kiosk, offer any employees as of September 8, 2021 full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and without prejudice to their preference to remain in their current positions at another of our stores.

WE WILL make the Walden Galleria kiosk employees as of September 8, 2021 whole for any loss of earnings and other benefits, less any net interim earnings, plus interest, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against them.

WE WILL compensate any Walden Galleria kiosk employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 3, 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.

WE WILL make employees whole for any loss of earnings and other benefits, plus interest, resulting from the unlawful temporary store closures and for any other direct or foreseeable pecuniary harms suffered as a result of that discrimination against them.

WE WILL file with the Regional Director for Region 3, 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 forms reflecting the backpay award.

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

WE WILL post this notice and an Explanation of Rights at our Buffalo-area stores for 1 year. In addition, WE

WILL distribute these same documents to you and our supervisors and managers electronically, such as by email, posting on an intranet or an internet site, or any other electronic means we customarily use to communicate with you and our supervisors and managers.

WE WILL hold a meeting or meetings during work hours at our Buffalo-area stores and schedule the meeting or meetings to ensure the widest possible employee attendance. At the meeting or meetings one of our high-ranking management officials or, in the alternative at our option, a Board agent in the presence of such an official, and, if the Union so desires, a union representative, will read this notice and the Explanation of Rights to employees. A copy of the notice and the Explanation of Rights will be distributed by a Board agent during this meeting or meetings to each employee in attendance before the documents are read.

STARBUCKS CORPORATION

The Board's decision can be found at https://www.nlrb.gov/case/ 03-CA-285671 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940

APPENDIX B

EXPLANATION OF RIGHTS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

Employees covered by the National Labor Relations Act ("Act") have the right to join together to improve their wages and working conditions, including by organizing a union and bargaining collectively with their employer, and also the right to not do so. This Explanation of Rights contains important information about your rights under this Federal law. The National Labor Relations Board ("NLRB") has ordered Starbucks to provide you with the Explanation of Rights to describe your rights and to provide examples of illegal behavior.

Under the Act, you have the right to:

- Form, join, or assist a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Bargain collectively through your union for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment and union organizing with your coworkers or a union.
- Take action with one or more coworkers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency or seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities.

It is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during nonwork time, such as before or after work or during break times; or from distributing union literature during non-work time, in nonwork areas, such as parking lots or break rooms.
- Prohibit you from discussing a union during working time while permitting you to discuss other subjects unrelated to work.
- Question you about your union support or activities, or about the union support or activities of other employees, in a manner that discourages you from engaging in that activity.
- Fire, demote, transfer, warn, suspend, formally coach, or more strictly enforce workplace rules against you, or reduce your hours or change your shift, or otherwise take any adverse action against you, or threaten to take such action, because you join or support a union, engage in concerted activity for mutual aid and protection, or file unfair labor practice charges or participate in an investigation conducted by the NLRB.
- Impose more onerous and rigorous terms and conditions of employment on you, or threaten to do so, because you join or support a union, or because you engage in concerted activity for mutual aid and protection.

- Threaten you with loss of pay or benefits, or threaten to close your workplace, if you choose a union to represent you.
- Promise or grant promotions, pay raises, or other benefits to discourage union support.
- Solicit grievances or requests for improved terms and conditions of employment from you to discourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Surveil or record your union activities or give the impression of doing so.
- Make unilateral changes in your terms and conditions of employment without first providing your union with notice of the proposed changes and affording the union an opportunity to bargain about the changes, except in certain situations.
- Transfer employees to, hire new employees to work in, and overstaff stores with upcoming representation elections to dilute prounion support in the elections.

Illegal conduct will not be permitted. The NLRB enforces the Act by prosecuting violations. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may identify possible violations without your employer or anyone else being informed. The NLRB will investigate possible violations if a charge is filed. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law, to pay lost wages and benefits, and to cease violating the law.

For more information about your rights, the NLRB, and the Act and for contact information for your nearest regional NLRB office, visit the Agency's website: http://www.nlrb.gov.

Or you can contact the NLRB by calling toll-free: 1-844-762-6572. Hearing impaired callers who wish to speak to an NLRB representative should contact T-Mobile Relay Conference Captioning by visiting its website at https://www.tmobileaccess.com/federal and submitting a form asking its Communications Assistant to call our toll free number at 1-844-762-6572.

If you do not speak or understand English well, you may obtain a translation of this Notice by calling the toll-free number listed above.

This is an official Government Notice and must not be defaced by anyone.

Jessica Cacaccio and *Alicia Pender Stanley, Esqs.,* for the General Counsel.

Terrence Murphy, Jacqueline Phipps Polito, Ethan Balsam, William Whalen, Esqs., and *(On Brief) Jeffrey Hiller* and *Bruce Buchanan, Esqs. (Littler Mendelson PC*), for the Respondent.

Ian Hayes and *Michael Dolce, Esqs. (Hayes Dolce),* for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Buffalo, New York from July 11 to September 14, 2022. The Charging Party, Workers United (the Union) filed 35 charges between November 4, 2021, and May 23, 2022 alleging assorted unfair labor practices committed by Starbucks Corporation (the Respondent) between August 2021 and July 2022.[1] On May 6, 2022, the General Counsel issued the initial complaint consolidating the above-captioned 32 unfair labor practice cases. On May 10, the Regional Director further consolidated the Union's objections in Case 03-RC-282127 with said unfair labor practice cases.[2]

On June 27, 2022, the General Counsel issued the third amended complaint and notice of hearing alleging numerous violations of the National Labor Relations Act (the Act).[3] The allegations involve 21 of the Respondent's stores in in western New York—20 in or around Buffalo and one in Rochester (collectively, Buffalo area or Buffalo market), and fall under the following sections of the Act:

> Section 8(a)(1)—soliciting employee complaints and grievances; promising increased benefits and increasing benefits and improved terms and conditions of employment; promising to remedy and remedying grievances; changing new employee training procedures; diluting union support by hiring new employees; surveilling or creating the impression that employees union activities were under surveillance; packing a voting unit with employees temporarily transferred from other stores; interrogating employees about their protected concerted and union activity; restricting employees from posting union literature; and threatening or otherwise coercing employees from engaging in union or other protected activities.
>
> Section 8(a)(3)—enforcing rules selectively and disparately

[1] All dates refer to the period between August 2021 and July 2022 unless otherwise stated.

[2] Administrative notice is taken of the Regional Director's *Order Directing Hearing on Objections and Order Consolidating Cases and Notice of Hearing,* dated May 10, 2022, which consolidated the hearing concerning objections in Case 03-RC-282127 with the unfair labor practice proceeding in accordance with Rule 102.69(c)(ii) of the National Labor Relations Board's (the Board) Rules and Regulations.

[3] 29 U.S.C. §§ 151-169.

by applying them more strictly against employees who engaged in union or other protected activities; and retaliating against such employees for engaging in union or other protected concerted activities in various respects, including discriminatorily terminating or constructively terminating seven employees.

Section 8(a)(4)— retaliating against employees for filing charges or giving testimony under the Act by discriminatorily issuing discipline, including termination, or reducing employee work hours.

Section 8(a)(5)—failing and refusing to bargain collectively and in good faith with the Union as the collective-bargaining representative of its employees by terminating bargaining unit employees without providing pre-implementation notice and bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

On the entire record,[4] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party and Respondent,[5] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Seattle, Washington and various locations throughout the United States including in and around Buffalo, New York and Rochester, New York, has been engaged in the retail operation of stores offering coffee and quick-service food. Annually, the Respondent, in conducting its business such operations, derives gross revenues in excess of $500,000, and purchases and receives at each of its Buffalo facilities and its Rochester facility products, goods, and materials valued in excess of $5,000 directly from points outside the State of New York. The 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 and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations

The Respondent, the world's largest coffeehouse chain, has more than 25,000 locations in over 75 countries. In the United States, it operates over 9,000 coffee shops and has approximately 200,000 employees, which the company refers to as partners.[6] The United States market is divided into regions or areas managed by regional directors. They supervise teams of district managers. District managers supervise store managers and assistant store managers. Store managers and assistant store managers supervise shift supervisors and baristas.

The district manager's job description, in pertinent part, requires those individuals to spend the "majority of time . . . staffing, coaching, developing and managing the performance of store managers, understanding local customer needs, ensuring district-wide customer satisfaction and product quality, analyzing key business indicators and trends, managing the district's financial performance, and managing safety and security within the district. The incumbent is responsible for modeling and acting in accordance with Starbucks guiding principles."

Upon being hired, employees sign and acknowledge receipt of the Respondent's employee handbook, the Partner Guide.[7] That manual summarizes the duties of store personnel:

Store manager: The store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), shift managers (where applicable), shift supervisors and baristas. The store manager is responsible for personnel decisions, scheduling payroll and fiscal decisions. A store manager is considered full-time and is generally scheduled to work at least 40 hours each week.[8]

Assistant store manager: An assistant store manager assists the store manager with general operations. An assistant store manager is considered full-time and is generally scheduled to work at least 40 hours each week.

Shift Supervisor: A shift manager performs all the duties of a barista, as well as helping guide the work of others and assisting with ordering and accounting. A shift supervisor generally works fewer than 40 hours per week.

Barista: A barista is responsible for preparation of hot and cold beverages, cash regular transactions, store cleanliness, product merchandising and excellent customer service. A

[4] Citations to the record are included to aid review and are not necessarily exclusive or exhaustive. In making credibility findings, all relevant factors have been considered, including the interests and demeanor of the witnesses; whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. See, e.g., *Daikichi Corp*., 335 NLRB 622, 623 (2001), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB,* 111 F.3d 1460, 1465 (9th Cir.), cert. denied 522 U.S. 948 (1997).

[5] The Respondent's December 27, 2022 motion to strike portions of the Union's post-hearing brief that reference evidence unrelated to this case is denied. I have considered only evidence in the record that relates to the unfair labor practices alleged in the complaint. Evidence introduced into the record for the purpose of providing evidence relevant to the issues in the proceeding in the Western District of New York has not been considered. In addition, on February 5, 2023, I denied the Union's motion to reopen the record and, essentially, leave to amend the complaint to request a bargaining order at Walden & Anderson.

[6] The Respondent generally refers to its employees as partners because every employee has shares in the company's employee stock ownership plan. (R. Exh. 112 at 2.)

[7] Every witness called by the General Counsel recalled or otherwise acknowledged on cross-examination that they signed or would have signed the Partner Guide when hired.

[8] R. Exh. 88.

barista generally works fewer than 40 hours per week.

Store managers and assistant managers receive salaries and work at least 40 hours per week. Assistant store managers are eligible for overtime pay; store managers are not. Baristas and shift supervisors are paid on an hourly basis, generally work less than 40 hours per week, share tips from customers, and are eligible for overtime pay. Where applicable, overtime is applied to hours worked in excess of 40 per week, or in excess of eight hours per day depending on state law.

B. Store Management

The Respondent's stores generally operate four distinct channels: cafes, drive-through, mobile ordering, and delivery pick-ups. Typically, channels may only be disabled or closed by a manager after getting approval from a district manager. Prior to August 23, Buffalo-area stores did not typically have another manager present whenever the store manager was off-duty. As such, some shift managers in understaffed Buffalo-area stores regularly disabled channels on their own.[9]

The Respondent's regular store practice in the Buffalo area has been to modify store hours based on business needs by evaluating traffic patterns and sales to determine the hours of operation. In 2020, the COVID-19 pandemic (the pandemic or COVID) caused the Respondent to close Buffalo-area stores for periods of time and modify store hours when they reopened. Staffing shortages also became a factor in determining whether to shorten store hours or open stores at all.

The Digital Playbuilder (Playbuilder) is iPad software available to "play callers" at the Respondent's stores. It uses staff and customer flow information to recommend a proposed "play," i.e., the deployment of staff to work assignments. Play calling is usually done by shift supervisors but can also be done by all store personnel, including managers. Although Playbuilder's recommendations are not binding, shift managers are expected to use it. Prior to September, Playbuilder was not widely used or used effectively in the Buffalo market.[10]

C. Employees' Duties and Responsibilities

1. Transfers

Employee requests to transfer to a different store "are subject to district manager approval, and are contingent upon business needs, partner availability and partner performance." Baristas must have completed "Barista Basics" and "be in good standing, which means the partner is adhering to company policy, is meeting the expectations of the job, and has no recent written corrective actions. Ultimately, permission for a partner transfer is at the discretion of the store manager and/or district manager." The employee should make the request at least 60 days before the requested transfer date and the Respondent "retains sole discretion in determining whether a partner will be transferred."[11]

2. Work Hours and Scheduling

The Partner Guide requires hourly employees to submit their proposed schedule of the days and hours available to work on the Partner Availability Form. Scheduling requests are not guaranteed, however, as store managers are expected to create a weekly schedule for each employee "that balances partner availability and business needs." Employees are also "expected to report to work for . . . store meetings . . . at times that may fall outside the partner's days or hours of availability."

If an employee's availability changes, a new Partner Availability Form is to be submitted to the store manager for consideration. Employees are expected to be available to work "for a minimum number of days or hours each week. Availability that doesn't meet business needs may result in separation from employment."[12]

In addition to their submissions on the Partner Availability Form, employees enter their availability for upcoming shifts through an online program called Partner Hours. Utilizing another online program—the Partner Planning Tool—store managers schedule employees 21 days in advance based on employee availability and projected store needs. As such, employees must submit their availability at least 21 days in advance. If employee availability changes, the employee is to "submit a new availability request in the Starbucks Partner Hours system. The store manager will review the information for scheduling consideration. There is no guarantee that a request for a schedule change will be approved."[13]

The Respondent's written guidance for store managers in situations where an employee's availability "does not meet business needs" instructs them to meet with and inform the employee of the specific days and times needed to meet the minimum business needs of the store. If the partner's hours do not meet the store's needs, the manager may "[p]rovide partner the following options: open availability to meet the needs of the business; voluntarily seek to be employed in another role (i.e., SS to BAR if the availability will meet requirements in the alternate role); consider a transfer if the partner is qualified . . . ; consider voluntarily resigning." If a partner does not select any of these options by a deadline set by the manager, then the manager may "involuntary separate [the employee] for insuffi-

[9] It is undisputed that: (1) the approval by a manager and district manager was required in order to disable or close a channel; and (2) prior to August 23, an undetermined number of Buffalo-area shift supervisors bypassed the formal approval process and took such action on their own initiative. (Tr. 1175, 1233, 1903-1904, 2433, 2579-2580, 2626, 2771-2772, 2868-2869, 3414-3420.)

[10] Several of the Respondent's witnesses testified that play callers should use Playbuilder when deploying staff. (Tr. 2582, 2588-2589, 2606, 2731, 2781, 2906-2915, 2983, 3395.) Although the Quick Reference Guide does not require its use, the listed responsibilities in the shift supervisor job description does mention their use of "operational tools to achieve operational excellence during the shift." (R Exhs. 90, 101-103.). Nevertheless, it is undisputed that Playbuilder was not being used very much in Buffalo prior to September. (Tr. 2597, 2906-2915, 2732, 2983, 3043, 3077.)

[11] Id. at 14.

[12] GC Exh. 140 at 15.

[13] Mkrtumyan testified that an employee must wait six months after their availability request is approved before asking to change it. (Tr. 3391-3392, 3475-3476.) However, there is no documentary evidence in the record of such a policy or procedure.

cient availability."[14]

Prior to September, Buffalo area employees switched shifts with employees at other stores through various methods, including text message and informal group chat called BuffBux. (Tr. 1176, 1800). Employees would post shifts they needed covered, and other employees would agree to cover them based on their own schedules and desires. (Tr. 1176).[15]

Prior to October, employees in the Buffalo market typically communicated through group chat with employees at other stores to pick up shifts.

3. Meal Breaks

Employees receive 30-minute meal breaks if scheduled to work shifts of a minimum duration as determined by state law. Baristas and shift supervisors must clock out for meal breaks, unless required to take their meal breaks in the store because of the Respondent's requirement that there be at least two employees in the store whenever open for business:

> Note: Starbucks Safety and Security Guidelines require the presence of at least two partners in the store at all times. It a partner is scheduled for a meal break and only one other partner is on shift, the partner should go to the back of the store for the duration of the meal break. Because the partner is not free to leave the store, the meal break will be paid. The partner should not punch out or in for the meal break, but instead should record the times of the meal break in the Punch Communication Log. Please consult the store manager for directions.[16]

4. Non-Harassment Policy[17]

The Respondent prohibits discrimination, harassment and retaliation in the workplace based on the protected characteristic or status of employees, including gender identity, gender expression, and transgender status. Violation of the non-harassment policy will result in discipline, which may include termination:

> Harassment includes conduct that creates an intimidating, disrespectful, degrading, offensive, or hostile working environment. Starbucks prohibits harassment based on race, color, religion and religious creed, national origin or place of origin, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), physical or mental disability, age, protected military or veteran status, sexual orientation, gender identity, gender expression, transgender status, genetic information, legally protected medical condition, marital or domestic partner status, status as a victim of domestic violence (including sexual assault or stalking), or any other basis protected by applicable law.

The prohibition against harassment, including sexual harassment and bullying, covers a broad spectrum of inappropriate verbal and non-verbal conduct. The policy cites, in pertinent part, the following examples: touching, kissing, groping, threats, degrading comments, epithets, slurs, sexual teasing, requests for sexual favors, and obscene gestures or leering. The policy concludes with detailed guidance on the responsibilities of employees to maintain a respectful workplace:

> A Respectful Workplace Is Everyone's Responsibility
>
> Refrain from any conduct that could be construed as discrimination, harassment, bullying or retaliation.
>
> Treat others with respect and dignity. Everyone at Starbucks, including partners and customers, should feel welcomed and safe.
>
> Keep the workplace professional at all times.
>
> Draw early attention to unwelcome or offensive conduct by informing the offending person to stop, if comfortable doing so.
>
> If experiencing or becoming aware of conduct that violates the respectful workplace policies, immediately report concerns to a store manager, district manager, the Partner Resources Support Center, or to Ethics & Compliance.
>
> 5. Investigation Process
>
> When Starbucks receives a complaint alleging a violation of the respectful workplace policies or is otherwise made aware of conduct that may violate these policies, it will undertake a prompt, thorough and objective investigation. Starbucks will reach reasonable conclusions based on the information gathered during the investigation.
>
> Partners are expected to participate in an investigation and to provide truthful and accurate information. Starbucks will protect the confidentiality of those involved to the extent possible, disclosing information only as necessary to investigate and take prompt action to end conduct and behaviors that violate policy.
>
> The investigation will be documented. Starbucks will advise the partner who submitted the complaint, and other individuals as appropriate, of the results of the investigation and whether appropriate disciplinary action has been taken.
>
> 6. Disciplinary Action
>
> A partner who is found to have violated the respectful workplace policies following

[14] The Respondent cited this as R. Exh. 285. However, that exhibit is a copy of a *Johnny's Poultry* statement.

[15] Michaela Murphy testified that the formal shift switching policy was to avoid situations where employees were not paid correctly for shifts they picked up because no managers knew about it. (Tr. 2733). But Respondent presented no evidence that any employees were paid incorrectly, or that employees complained about being paid incorrectly after picking up a shift using the informal BuffBux chat system.

[16] GC Exh. 140 at 16.

[17] GC Exh. 140 at 22-25.

> an investigation will be Subject to disciplinary action, up to and including Separation
> from employment. Starbucks will also take appropriate remedial action if it learns
> that any third party in the workplace has engaged in prohibited conduct.[18]

5. Attendance and Punctuality[19]

An employee who is unable to report to work on time or at all must call the store manager or assistant store manager prior to the start of the shift. If a manager is not available, the employee must notify the employee leading the shift. Leaving messages, including email or text messages, without first making reasonable attempts to contact one of the aforementioned individuals is unacceptable. The policy also details the steps to be taken if an employee is unable to report to work for a scheduled shift:

> Responsibility for Finding a Substitute: Planned time off, such as for a vacation day, must be approved in advance by the manager. If a partner will be unable to report to work for a scheduled shift and knows in advance, it is the partner's responsibility to notify the store manager or assistant store manager and for the partner to arrange for another partner to substitute.
>
> In the event of an unplanned absence, e.g., the sudden onset of illness, injury or emergency, or when the partner is using paid sick leave allowable by law, the partner will not be held responsible for finding a substitute. The partner is still responsible for notifying the store manager or assistant store manager (or partner leading the shift if the manager is not in the store) of the absence prior to the beginning of the shift so coverage can be arranged if needed. Failure to abide by this policy may result in corrective action, up to and including separation from employment. Some examples of failure to follow this policy include irregular attendance, one or more instances of failing to provide advance notice of an absence or late arrival, or one or more instances of tardiness.
>
> Under certain circumstances, inability to work due to a medical condition may entitle a partner to a leave of absence. *(Refer to the "Time Away from Work" section of this guide for more information.)*

6. Not Working While Ill

The Partner Guide requires that any "employee who is vomiting or has diarrhea, jaundice, sore throat with fever, or a medically diagnosed communicable disease must notify the manager. The manager then determines whether work restrictions apply."[20]

Responding to the pandemic, on May 18, 2021, the Respondent issued health and safety procedures for employees to follow. These procedures required employees to: (1) monitor, evaluate and report symptoms for COVID-19; (2) prohibited them from coming to work if they were sick or had been in contact with someone who tested positive for COVID-19 unless the employee was fully vaccinated; and (3) to complete a Partner Pre-Check process when signing in to work at the beginning of a shift to confirm that an employee is able to work.[21] Store managers and play callers are required to observe and document compliance with this process in a COVID log:

> Use this log to validate that all partners have completed the mandatory pre-check and are ready and able to work their shift. Store managers and Play Callers must take their own temperature and have another partner in the store verify they completed all steps. Any Starbucks partner including, DMs, RDs, etc., that visit your store for work purposes must also complete all monitoring your health steps via the Quick Connect before working in your store.
>
> > When a partner arrives, the Play Caller will ask the partner to complete the pre-check steps:
> > Partner takes own temperature and shows the Play Caller whether it is above or below 100.4 F / 38 C. If a thermometer is unavailable, ask the partner if they feel feverish (chills or sweating); if they are feeling feverish and has not been vaccinated within the last three days, send the partner home immediately.
>
> Partner navigates through the COVID-19 Virtual Coach and receives a message the partner should not come to work OR partner may return to work, and shows the message to the Play Caller.
>
> The Play Caller will log the results as 'Yes' or 'No' on the *Partner Pre- Check Log* below.
> If the partner's temperature is 38 C or 100.4 F or higher send the partner home immediately.
> If the partner receives a message of partner should not come to work from COVID-19 Virtual Coach, send the partner home immediately and let the store manager know the next steps and pay options.
>
> When complete, store this log in the binder where other Health Department and *Food Safety Assessments* are located.

7. Dress Code and Personal Appearance[22]

The Partner Guide's dress code provision provides store managers with the discretion to determine whether an employee is "inappropriately dressed or with unacceptable appearance." If so, the employee "may not be permitted to start their shifts.

[18] Id. at 25.
[19] Id. at 27.
[20] Id. at 28.
[21] R. Exh. 144
[22] GC Exh. 140 at 28-31.

Failure to adhere to the dress code may result in corrective action, including separation from employment." The dress code also includes several specific categories relevant to this dispute:

> General Appearance, Colors and Materials.
>
> 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.)
>
> Shirts, Sweaters and Jackets.
>
> 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.
>
> 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.
>
> 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.
>
> Pants, Shorts, Skirts and Dresses.
>
> 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.
>
> Pants must not drag on the floor. Shorts and skirts must not be shorter than four inches above the knees. Dresses must follow the requirements for shirts and skirts.
>
> Footwear.
>
> Footwear should provide support, comfort and safety. Shoes, in leather, faux leather, suede, rubber or similar waterproof materials must have closed toes and closed flat heels, providing as much coverage at the top of the foot as possible. Shoes or boots must be within the color palette (except white) and may have a small amount of accent color.
>
> Jewelry and Body Piercings.
>
> No jewelry is allowed on the hands or forearms, including watches, bracelets or wrist bands, except for one ring in the form of a plain band without stones or etchings.
>
> Other jewelry must not be distracting. Once small facial piercing no larger than a dime is allowed. Earrings or ear gauges must be no larger than a quarter. Necklaces, including medical alert necklaces, are allowed and must be worn under clothing. No other visible pierced jewelry or body adornments are allowed, including tongue studs and subdermal implants.
>
> Tattoos.
>
> Visible tattoos on the face or throat are not allowed. Other visible tattoos are permitted but must not contain images or words that are obscene, profane, racist, sexual in nature or otherwise objectionable.
>
> Pins.
>
> 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.
>
> Partners are not permitted to wear buttons or pins that advocate a political,
> religious or personal issue.

8. Social Media

Employees are required to comply with the Respondent's Social Media Guidelines, which are available on the Partner Hub. Those guidelines are also set forth in the Partner Guide. Generally, any conduct that adversely affects employee performance, the performance of other employees, customers or others associated with the Respondent, or the Respondent's legitimate business interests, may be subject to discipline, including termination. The policy restricts employees from distributing any information about the Respondent other than information that has already been made public, including store performance, policies, and procedures.[23]

9. Soliciting and Distributing Notices

Employees are prohibiting from distributing or posting notices, posters, or leaflets in work areas. With the exception of company-sponsored events or activities, employees are also prohibited from soliciting other employees or non-employees in stores during an employee's work time.[24]

[23] Id. at 35.
[24] Id at 36.

10. Video Recording, Audio Recording and Photography

Except as protected under federal labor laws, employees are prohibited from video recording or audio recording or photographing other employees or customers in stores without their consent.[25]

11. Workplace Violence

Violence and threats of violence in the workplace that may put an employee at risk are prohibited. Such conduct or behavior are those that "significantly affect the workplace, generate a concern for public safety or could result in damage to property, physical injury, or death," including "disruptive, aggressive, or abusive behavior that generates anxiety or creates a climate of distrust, or "intimidating, frightening or threatening" statements or behaviors "that generate concern for personal safety."[26]

12. Employee Conduct and Communications

The Partner Guide requires employees to be professional and respectful in communicating with coworkers and customers. Vulgar or profane language is prohibited. It also instructs employees regarding communications with store managers:

> Partners who need to contact the manager during nonworking hours should call the manager to talk directly rather than sending a text message.
>
> If a partner's manager is unable to assist, questions may be referred to the district manager . . . or the Partner Resources Center at (888) SBUX411 (728-9411).[27]

This provision also methods by which employees can express their concerns and comments to high-level management by:

> Speaking Up at Starbucks.
>
> We take our commitment to listen and respond to partner feedback seriously. Partner feedback tells us how partners feel about working at Starbucks and helps ensure that we stay true to Our Mission and coffee heritage in all that we do.
>
> In addition to participating in Partner Open Forums, town halls and webcasts, partners may visit the partner Hub to find links to Starbucks direct communication channels. Partner are encouraged to use these channels to provide feedback and comments about the work experience and how Starbucks programs and policies align with Our Mission.[28]
>
> Personal Mobile Devices; Personal Telephone Calls and Mail.
>
> Partners are not permitted to send or receive text messages using personal mobile devices while working. In addition, if a partner needs to contact the manager during nonworking hours (e.g., partner is unable to report for work), the partner must call the manager rather than send a text message
>
> Partners are not permitted to receive personal telephone calls at the store unless the nature of the call is an emergency. Personal telephone calls may be made only while on break, from the store's back room or office, and only if absolutely necessary and without disrupting store operations…

13. Promotional Opportunities

The Partner Guide advises shift managers interested in a management position—store manager or assistant store manager—to contact their store manager and district manager. However, it is does not state who baristas are to contact if they are interested in promotion to shift supervisor:

> Generally, a barista who has been employed with Starbucks for at least six months and who is a partner in good standing may be considered for a promotion to a shift supervisor position.
>
> Under certain circumstances, based on exceptional performance and business needs, a partner may be considered for promotion before serving minimum period of time.[29]

14. New Employee Training

The Respondent's training program for new employees is a "building-block approach to learning that begins on a partner's first day at Starbucks and grows with that partner throughout their career. Training programs include Barista Basics, Barista Trainer, Shift Supervisor . . . and Store Manager Training program for training on how to be a successful store manager or assistant store manager.[30]

15. Employee Development and Discipline

a. Partner Guide Policies

> Starbucks uses a conversation-based approach to performance and development. In addition to ongoing coaching, each partner will have at least two formal 1:1 Performance and Development Conversations with the manager each year. The goal of ongoing Performance and Development Conversations is to have two-way dialogue about partner performance, the partner's contributions to the store or district, how the partner wants to develop, and career goals.
>
> Partner in Good Standing.
>
> A partner being in "good standing" may be used by the company as an eligibility requirement for participation in certain programs or for career development opportunities, such as promotions or transfers. The manager will determine whether a partner is considered to be in "good standing" based on performance. Good standing means that the partner: is adhering

[25] Id. at 37.
[26] Id. at 38.
[27] Id. at 43.
[28] Id. at 45.
[29] Id. at 46.
[30] Id. at 47.

to company policy, is meeting the expectations of the job as determined by the manager, and has no recent corrective actions.

Corrective Action.

Corrective action communicates to the partner that performance problems exist or that the partner is engaging in unacceptable behavior. The intent of corrective action is to give the partner a reasonable opportunity to re-establish an acceptable level of performance or behavior.

Corrective action may take the form of a verbal warning, a written warning, demotion, suspension or separation from employment. The form of corrective action taken will depend on the seriousness of the situation and the surrounding circumstances. The evaluation of the seriousness of the infraction and the form of the corrective action taken will be within the sole discretion of Starbucks. There is no guarantee that a partner will receive a minimum number of warnings prior to separation from employment or that corrective action will occur in any set manner or order.

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

Violation of safety and/or security rules.
Theft or misuse of company property or assets.
Falsification or misrepresentation of any company document.
Violation of Starbucks drug and alcohol policy.
Possession of or use of firearms or other weapons on company property.
Harassment or abusive behavior toward partners, customers or vendors.
Violence or threatened violence.
Insubordination (refusal or repeated failure to follow directions).
Violation of any other company policy.[31]

b. Past Practices

Prior to August 23, the Respondent's stores in the Buffalo market varied widely in their enforcement of company policies and discipline relating thereto.[32] The most common infractions related to the time and attendance and dress code policies. Other policy violations related to foul language or inappropriate behavior, health and safety deficiencies, food and beverage abuse, and improper cash management.

Store	Employee	Date	Policy	Discipline
Camp Road	Cam Geiger	8/19/2021	Foul language	Termination
Camp Road	Gianna Reeve	6/30/2021	Cash handling	Documented coaching
Camp Road	Star Foy	4/19/2021	T & A	Final written warning
Camp Road	Sennie Lay	4/13/2021	T & A	Documented coaching
Del. & Chippewa	C. Roosevelt	6/15/2019	Cash handling	Documented coaching
Del. & Chippewa	C. Roosevelt	3/11/2019	Safety	Written warning
East Robinson	Denasia Starks	6/20/2021	T & A	Written warning
Elmwood	Myke Gollwitzer	12/3/2019	T & A	Written warning
Galleria Kiosk	Erin O'Hare	2/10/2021	Health	Documented coaching
Galleria Kiosk	Victoria Conklin	12/30/2019	Health	Documented coaching
Galleria Kiosk	Erin O'Hare	12/30/2019	Health	Documented coaching
Galleria Kiosk	Victoria Conklin	10/5/2018	Behavior	Written warning
Genesee Street	Alexis Rizzo	8/16/2021	T & A	Written warning
Genesee Street	Brandon Janca	8/9/2021	T & A	Final written warning
Genesee Street	R. Rivera-Long	7/14/2021	T & A	Documented coaching
Genesee Street	John Kappel	7/14/2021	T & A	Documented coaching
Genesee Street	Alexis Rizzo	6/4/2020	T & A	Documented coaching
Genesee Street	Alexis Rizzo	5/22/2021	T & A	Written warning
Genesee Street	Danka Dragic	5/5/2021	T & A	Final written warning
Genesee Street	Ronnie Dolan	4/4/2021	T & A	Written warning
Genesee Street	Danka Dragic	3/17/2021	T & A	Written warning
Genesee Street	N. Krishnakumar	3/4/2021	T & A	Documented coaching

[31] Id. at 47-48.

[32] Although not included among the stores in the General Counsel's definition of the Buffalo market, I also considered evidence of discipline issued at the South Greece and Mount Hope Avenue stores, which are located in the Rochester area. (R. Exhs. 250-252, 272-274.) I did not, however, give weight to discipline issued at stores located well outside the defined Buffalo market in New Hartford and Albany. (R. Exhs. 265, 275, 278.)

Genesee Street	Patricia Pulicene	1/26/2021	T & A	Final written warning
Genesee Street	Connor Maggiore	1/12/2021	Health	Termination
Genesee Street	Danka Dragic	10/23/2020	T & A	Documented coaching
Genesee Street	Amara Williams	12/13/2018	Beverage	Final written warning
Genesee Street	Alexis Rizzo	8/29/2018	T & A	Written warning
Genesee Street	Alexis Rizzo	8/14/2017	T & A	Documented coaching
Genesee Street	Chris Davis	2/11/2017	T & A	Written warning
Monroe Avenue	Mari Smith	7/8/2021	T & A	Written warning
Monroe Avenue	Haleigh Fagan	6/1/2021	T & A	Written warning
Monroe Avenue	Brian Nuzzo	2/24/2019	T & A	Documented counseling
Monroe Avenue	C. Lockwood	1/17/2019	T & A	Written warning
Monroe Avenue	Brian Nuzzo	11/12/2018	T & A	Documented coaching
Monroe Avenue	Brian Nuzzo	10/31/2018	T & A	Documented coaching
Mt. Hope Ave.	Denisha Brown	3/7/2019	Disrespect	Termination
Mt. Hope Ave.	Denisha Brown	10/23/2018	T & A	Written warning
Mt. Hope Ave.	Mysia Turner	10/22/2018	T & A	Termination
NFB	Kayla Casey	8/16/2021	T & A	Documented coaching
Sheridan-Bailley	Weston Costello	6/17/2021	Behavior	Termination
Sheridan-Bailey	Bianca Limina	4/28/2021	Disrespect	Written warning
Sheridan-Bailey	Eden Cruz	12/31/2020	T & A	Final written warning
Sheridan-Bailey	Andy Smead	10/26/2020	T & A	Final written warning
Sheridan-Bailey	Weston Costello	10/23/2019	T & A	Written warning
Sheridan-Bailey	Sean Bartlett	1/15/2019	T & A	Termination
Sheridan-Bailey	Sean Bartlett	1/8/2019	T & A	Final written warning
South Greece	Fabrizio Dinitto	12/30/2020	T & A	Written warning
Transit & French	Samantha Larson	6/30/2021	T & A	Written warning
Transit & French	Alyssa Scheida	11/9/2020	Disrespect	Documented coaching
Transit & French	Joe Nasby	11/9/2020	Disrespect	Documented coaching
Transit & French	Jim Kramer	11/16/2019	T & A	Final written warning
Transit & French	Katie Woltz	10/29/2019	T & A	Final written warning
Transit & French	Cameron Stoke	7/13/2015	T & A	Documented coaching
Transit & Maple	Kailey Saad	7/30/2021	T & A	Written warning
Transit & Regal	Lily Want	7/12/2021	T & A	Documented coaching
Transit & Regal	Andrew Laspesa	6/27/2021	T & A	Written Warning
Transit & Regal	Andrew Laspesa	5/22/2019	T & A	Documented coaching
Transit & Regal	Lexa Michels	7/3/2018	Dress/ Behavior	Final written warning
Walden & Ander.	Ryan Mox	1/28/2021	Food safety	Written warning

16. Employee Safety

The Respondent's safety program includes "manager and partner participation, safety education, regular inspections, incident investigation and action to address safety concerns." The Partner Guide refers to additional information that "may be found in the Respondent's Safety and Security Manual.[33]

17. Free Food and Beverage Benefit

Employees are entitled to one free food item and beverage while on break during scheduled shifts or during the 30 minutes prior to or after scheduled shifts:

> The store food and beverage benefit is available at the store in which the partner is working for the partner's personal consumption only; partners may not give away their partner food items or beverages to any other individuals. A partner may not receive more than one free beverage at a time and may not order multiple free beverages after the shift ends. The partner beverage may not be consumed while the partner is actually working, but only while on a rest or meal break. Additionally, partners are required to wait in line with other customers to receive their partner food items or beverages, and another partner should ring out each partner's

[33] The Safety and Security Manual was not offered into evidence. (GC Exh. 140 at 49.)

item(s).[34]

D. Employee Pay Increases

Prior to August 2021, the Respondent usually increased hourly wage rates annually. On November 1, 2020, the Respondent announced the following hourly pay increases, effective December 14, 2020:[35]

> At least 10% for baristas, shift supervisors and café attendants hired on or before Sep. 14, 2020.
>
> Tenured partners with three years of continued service will receive at least an 11% increase.
>
> Continued investment in shift supervisor pay. We will increase our premium above barista rates to help further recognize this critical leadership role, and attract the best talent including retaining high-performing baristas.
>
> At least a 5% increase to all starts rates so our store managers can continue to attract and retain new talent.
>
> An increase to the premium we already pay above minimum wage in every market.

E. The Respondent's Buffalo Area Stores

The 21 stores at issue are located in the Respondent's Area 156. Area 156 covers a vast territory along the northern rim of New York. It runs from Buffalo in the west to Saratoga Springs in the east. At issue are the following 21 stores: 520 Lee Entrance, Buffalo, NY 14228 (UB Commons); 1703 Niagara Falls Blvd., Amherst, NY 14228 (NFB); 8100 Transit Rd., Suite 100, Williamsville, NY 14221 (Transit & Maple); 933 Elmwood Ave., Buffalo, NY 14222 (Elmwood); 235 Delaware Ave., Buffalo, NY 14202 (Delaware & Chippewa); 3540 McKinley Pkwy, Blasdell, NY 14219 (Hamburg);[36] 4770 Transit Rd., Depew, NY 14043 (Transit & French); 2730 Delaware Ave., Buffalo, NY 14216 (Delaware & Kenmore); 5395-5495 Sheridan Dr., Amherst, NY 14221 (Williamsville Place); 9660 Transit Rd., Suite 101, East Amherst, NY 14051 (Transit Commons); 4255 Genesee St., Suite 100, Cheektowaga, NY 14225 (Genesee Street); 3235 Southwestern Blvd., Orchard Park, NY 14127 (Orchard Park); 5120 Camp Rd., Hamburg, NY 14075 (Camp Road); 5165 Main St., Williamsville, NY 14221 (Main Street); 1 Walden Galleria K-04, Cheektowaga, NY 14225 (Galleria kiosk); 1775 Walden Ave., Cheektowaga, NY 14225 (Walden & Anderson); 6690 Niagara Falls Blvd., Niagara Falls, NY 14304 (Niagara Falls); 6707 Transit Rd. #100, Buffalo, NY 14221 (Transit & Regal); 3186 Sheridan Dr., Amherst, NY 14226 (Sheridan & Bailey); 3015 Niagara Falls Blvd., Buffalo, NY 14228 (East Robinson); 3611 Delaware Ave., Tonawanda, NY 14217 (Delaware & Sheridan). The Respondent's Rochester facility is located at 2750 Monroe Avenue, Rochester, NY 14618 (Monroe Avenue).

F. The Organizing Campaign

1. The Dear Kevin Letter.

At some point in 2021, Buffalo-area employees began to plan a union organizing drive. Their efforts resulted in the creation of a labor organization, Workers United. At 12:31 p.m. on August 23, 2021, the Union launched its organizing drive by posting on Twitter.com the following letter to then-president and chief executive officer Kevin Johnson (the Dear Kevin letter):

> Dear Kevin,
>
> We believe that there can be no true partnership without power-sharing and accountability. We are organizing a union because we believe that this is the best way to contribute meaningfully to our partnership with the company and ensure both that our voices are heard and that, when we are heard, we have equal power to affect change and get things done.
>
> We are forming a union to bring out the best in all of us. Our organizing committee includes Starbucks partners from across the Buffalo region. Many of us have invested years of our lives at Starbucks, while others have recently become partners. We all have one thing in common -- we want the company to succeed and we want our work lives to be the best they can be.
>
> Starbucks' mission is improving communities one coffee at a time. Respecting partners' right to organize will help us help the company accomplish this mission, by improving our lives and raising standards across the industry. In this spirit of true partnership, we call on you to sign the Fair Election Principles, attached to this letter, to provide a level playing field that will enable Starbucks partners to choose whether or not to unionize without fear of reprisal.
>
> We see unions as the best way to make Starbucks a place to have a sustainable career and a true partnership. We do not see our desire to organize as a reaction to specific policies but as a commitment to making Starbucks, Buffalo, and the world a better place.
>
> We believe that the best way to truly inspire and nourish the human spirit is to organize for greater justice, greater equality, and a greater vision of what life can be for Starbucks workers across the Buffalo region and for workers in the coffee and restaurant industry. By signing onto these principles, Star-

[34] Id. at 69.

[35] Emily Filc, a partner resource manager, testified that the pay increases announced on November 1, 2020 were in fact implemented. (Tr. 2947-2956.) However, she failed to refute credible testimony by Michelle Eisen, an 11-year employee, that she had never received a "seniority-based wage increase" prior to 2021. (Tr. 308-309, 379-380.) In fact, Genesee Street support supervisor Taylor Pringle told shift manager Gianna Reeve that it was "great" that store employees were "finally getting a seniority raise and "it was about time" the Respondent "did something like this." (Tr. 1108).

[36] The Hamburg store is also referred to as the McKinley store.

bucks can prove itself a true partner in this mission.

In Solidarity,
Starbucks Workers United Organizing Committee

The Dear Kevin letter was signed by 49 baristas and shift supervisors, including: Alexis Rizzo, Gianna Reeve, Casey Moore, Jaz Brisack, Samantha Banaszak, Róisín Doherty, Erin O'Hare, Colin Cochran, William Westlake, Danka Dragic, Minwoo Park, Kellen Montanye, Caroline Lerczak, Michael Sanabria, Brian Murray, Michelle Eisen, Kathryn Bergmann, James Skretta, Cory Johnson, Stephen Simonelli, and Jonathan Nieves.

A list was attached to the letter proposing the following "Non-interference and Fair Election Principles for Partner Unionization:"

1. The right to organize a union is a fundamental civil right essential to our democracy.

2. If partners choose to unionize, there will be no negative repercussions from management.

3. Starbucks agrees not to make any implicit threats (lawful but unethical) or explicit threats (unlawful).

4. If Starbucks holds a meeting with partners on company time to discuss unionization, then the union may hold a meeting of equal length on company time. This holds true for one-on-one meetings or any discussions that Starbucks chooses to hold with partners during the union organizing effort.

5. If Starbucks posts any anti-union material on its premises, it will provide Starbucks partners equal space to post prounion material.

5. Starbucks management must not bribe or threaten partners with higher or lower wages or benefits to gain support. Management will not make changes in wages and benefits that were not announced or decided upon prior to the commencement of the union campaign.

6. Principled disagreements are part of the campaign process but disparaging remarks about Workers United or the labor movement are not appropriate and not conducive to a spirit of mutual respect and harmony and should not be made. Additionally, ad hominem attacks against individuals are unacceptable.

7. If any partner feels they have been retaliated against in any manner due to their union activity, Starbucks will agree to resolve this immediately by a mutually agreed upon arbitrator. The partner would still have the right to go to the National Labor Relations Board.

8. A secret ballot election will be conducted by the NLRB or, if both parties agree, by an arbitrator or a neutral community organization. If at any time Starbucks Workers United secures a simple majority of authorization cards of the eligible partners within an appropriate bargaining unit, Starbucks and the union may instead have the option, if they both agree, to recognize Starbucks Workers United as the exclusive representative of such partners via a card check election.

2. The Representation Petitions and Certifications

On and after August 23, employees at numerous stores began soliciting and signing authorization cards while store managers were present and when they were not.[37] On August 30, the Charging Party filed representation petitions with Region 3 for representation elections at the Elmwood, Camp Road and Genesee Street stores. In September, petitions were filed to represent employees at the Transit & Commons and Walden & Anderson stores, and the Galleria kiosk, but were withdrawn. Subsequently, petitions were filed for the following stores: in November for Walden & Anderson, Sheridan & Bailey, and Transit & French; in February for Delaware & Chippewa and Monroe Avenue; in March for Williamsville Place; and in April for East Robinson and Transit Commons. No petitions were filed at the following stores: UB Commons; Niagara Falls Boulevard; Transit & Maple; McKinley; Delaware & Kenmore; Orchard Park; Main Street; Niagara Falls; Transit & Regal; and Delaware & Sheridan.

The Charging Party was certified to represent employees at the following stores: Elmwood on December 17; Genesee Street on January 10; Sheridan & Bailey and Transit & French on March 17; Delaware & Chippewa and Monroe Avenue on April 15; East Robinson on July 14; and Transit Commons on July 19.[38]

G. The Respondent's Area-Wide Response to the Organizing Campaign

1. The Buffalo Market Gets the Respondent's Attention

In July 2021, Allyson Peck, a regional vice president, asked Deanna Pusatier, the regional director in Boston, to also assume responsibility for Area 156. Area 156 is vast, spanning from Buffalo and Niagara Falls in the west to Albany and Saratoga on the eastern end of the state. While responsible for the Boston market, Pusatier dealt with many of the issues that plagued everywhere else, including Buffalo, during the pandemic—staffing shortages, the health and safety of employees and customers, store closings, reduced store channels (e.g., drive-through or café only), and reduced store hours. Pusatier accepted and "began immersing into the market in August virtually." She did not, however, arrive in Buffalo until September 1.[39]

[37] It is not disputed that employees solicited and signed cards during work time. (Tr. 696, 948, 1074, 1101, 1122-23, 1140-48, 1280, 1842, 1955, 2161-21622.)

[38] The Buffalo campaign spurred additional organizing efforts at hundreds of the Respondent's stores throughout the country. The Union prevailed in the overwhelming majority of the elections that ensued. Between March 17 and September 8, 2022, it was certified as the labor representative at approximately 250 stores outside of the Buffalo market. (R. Exh. 323.)

[39] Around early July 2021, Pusatier, then-regional director in Boston, attended a regional meeting in Saratoga Springs—on the other end of

Prior to August 2021, the Respondent's executives visited numerous United States markets to assess operating conditions and consider changes. The Buffalo market, however, had not received such attention for a considerable period of time, if at all. That changed after August 23. The Respondent's response to the organizing campaign was swift, massive, and unprecedented. Almost immediately, the Respondent blitzed the Buffalo market with an extraordinary number of corporate officials, managers, and others.[40] The Respondent's response teams included: Rossann Williams, then–executive vice president of Starbucks North America and president of Starbucks U.S.; Allyson Peck, regional vice president; Deanna Pusatier, regional director; Alan Modzel, director of U.S. Community Engagement Director; Emily Filc, a temporary regional director to serve as a partner resource manager supporting Pusatier; Kristina Mkrtumyan and Mark Szto, district managers; Michaela Murphy and Greta Case, district managers supporting Mkrtumyan and Szto, respectively; and district managers from other parts of the United States to serve as store support managers, and facilities department employees (collectively, the Williams team).[41]

The Williams Team visited and spent hours in Buffalo-area stores, where they: met and spoke with managers and employees about their experiences working for the Respondent; elicited grievances and suggestions; commented on the organizing campaign; observed store personnel working; assessed the conditions of stores; ordered renovations, repairs, cleaning, and other improvements; performed work, including store manager and barista duties; implemented a "level setting" or "level resetting" of company rules; imposed discipline; centralized hiring functions by transferring those functions from store managers to human resource personnel; centralized training functions by transferring them from stores to designated training stores; and permanently closed a kiosk. Additionally, the Respondent's response teams scheduled election-related meetings – "listening sessions" – in stores and hotel conference rooms.[42]

The most common employee complaints were understaffing, hiring, training, and facility/equipment related issues. The corporate managers estimated that the Buffalo stores were understaffed by as many as 300 employees. The officials also began assessing management and employee performance, and compliance with company policies and procedures.[43]

2. The Respondent prepares Buffalo-area store managers

Sometime in early September, Buffalo-area store managers and district managers were directed to join a last-minute videoconference with Nathalie Cioffi, a partner resource manager, and Pusatier. Cioffi and Pusatier explained that there was union activity in Buffalo and instructed the managers on how to respond if the subject came up in stores. They told the managers that if union organizers came into a store and solicited employees to sign union authorization cards, they were to tell the person that the employees were working and to do it when they were not at work.[44]

Several days thereafter, the Respondent made changes at the district level. Young was reassigned to the newly-created Rochester district. LeFrois, however, was not as fortunate. While meeting with store managers David Almond and Patricia Shanley at the Elmwood store, LeFrois was interrupted several times by telephone calls. Appearing flustered, he apologized because "[t]hey keep pulling me away to talk about the Union stuff." LeFrois also expressed concern that "they" would use him as a "scapegoat," and he would lose his job. His prediction came true. The following day, Pusatier separated LeFrois from the company. In an emotional videoconference call the same day, LeFrois informed the store managers that he was leaving the company.[45]

Thereafter, Pusatier and Filc held additional meetings with Buffalo-area store managers to instruct store managers on how to respond to union-related activities in their stores. Initially, Pusatier and Filc told them that it was okay for employees to

the state, along with other regional directors. She testified concerns regarding the "district manager leadership that we were seeing" because they observed poor and dirty store conditions in Saratoga Springs. However, Pusatier made no mention of Buffalo store conditions at that time, except to state on cross-examination that she spent only one or two days in Buffalo during her initial "immersion" across the northeast as regional director. Pusatier testified that when she agreed to oversee Area 156, Peck, who did not testify, told her that conditions "in Saratoga Springs [were] representative of the market." Prior to arriving in Buffalo on September 1, however, Pusatier had no knowledge that "a store or Buffalo was going to be worse." In any event, there is no evidence that her virtual "immersion" into Area 156 during August contemplated measures beyond those implemented in Boston during the pandemic. (Tr. 2826-2834, 2858-2859 .)

[40] The Respondent did not refute credible and consistent employee testimony regarding the unprecedented nature of these encounters. (Tr. 93, 417, 544, 859, 1220, 1531, 2651.)

[41] Few, if any Buffalo area baristas and shift supervisors had ever met any of those individuals. Previously, the highest level manager that these employees met was their district manager, and those visits were rare.

[42] It was not unusual for Howard Schultz, the Respondent's chief executive officer and former chairman, and others high level corporate officials to visit markets to assess needs and respond. (Tr. 2856, 3371.) Aside from high profile diversity initiatives in certain cities (e.g., Philadelphia, Pennsylvania and Ferguson, Missouri), however, the Respondent provided no explanation as to how it previously decided which markets to visit. Managers testified that high-ranking executives, including Schultz, often visit markets to determine how better to serve them. In any event, there is no credible evidence that any of the visits and changes that followed the arrival of the Respondent's response teams in Buffalo were planned prior to August 23.

[43] The Respondent's witnesses frequently used vague company terminology such as the "Starbucks culture" the "customer experience," and the "partner experience" when referencing store and employee work conditions, employee performance, and company standards. (Tr. 2369, 2709, 2842, 2847-2848, 2859-2861, 2902, 3032, 3260, 3343-3344, 3383-3384, 3401-3404.)

[44] I based these findings on the credible and unrefuted testimony of David Almond, the former Transit Commons store manager. (Tr. 1843, 1848-1850.)

[45] Although LeFrois merely told the store managers that he was leaving the company, Pusatier's testimony indicated that he was terminated. (Tr. 1848-1850, 2832.)

wear prounion pins. On one of the calls, Peck joined in and told them to prohibit employees from wearing those pins. Peck also told the managers that the union activity was not because employees had any concerns, but rather, Buffalo-area stores were "not to standard." Asked by David Almond what she meant by "not to standard," Peck said that managers were allowing too many employees to call out sick without holding them accountable, were not providing sufficient training, and there were widespread facilities issues. David Almond then asked what the process was for facilities issues. Pusatier explained the process—log a ticket, if no response, email the facilities manager and get the district manager involved. Almond commented that the managers followed that process, but were usually told to wait because there no money was available.

3. Store Support Managers

In the past, the Respondent has sent managers from stores around the country to destinations experiencing operational or other problems—seemingly everywhere, except to the Buffalo area. They were referred to as support managers or operations coaches.[46] After August 23, the Respondent began sending store managers from around the country to serve as support managers in every Buffalo-area store. The support managers were given time-limited-assignments (TLA) of 89 days. They served as the store manager if the manager was off-duty or as an additional manager on the floor. Support managers also assisted with or took over several store functions, such as scheduling, managing store operations, redeploying employees among the store channels as needed, and training managers and shift supervisors to use the Playbuilder tool.[47]

4. Hiring

Prior to September, the Respondent utilized hourly recruiting specialists in at least 26 other markets in the United States. In September meetings, after employees complained of understaffing in various stores, the Respondent ratcheted up hiring in Buffalo.[48] The Respondent significantly increased staffing, accomplishing this task by assigning hourly recruiters to relieve store managers of the time-consuming process of pre-screening, interviewing, and selecting candidates.[49]

5. Training

Prior to September 2021, new employees in the Buffalo area were typically trained in their assigned stores by barista trainers, Barista trainers were baristas who were promoted to those positions after being trained by their store managers. In return for training a new employee, a trainer would receive a financial bonus.

On September 5, the Respondent revised its training process in Buffalo by centralizing training at the closed Walden & Anderson store. At the time, the Respondent already had 40 stores around the United States dedicated entirely to training new employees.[50] Walden & Anderson remained closed to customers until it reopened on November 8. At that time, since Walden & Anderson was not centrally located, some centralized training shifted to two other stores, Niagara Falls Boulevard and East Robinson. The three stores remained open to customers but closed early on occasion for training. Consequentially, barista trainers in other Buffalo area stores no longer received new employee training opportunities and the training bonuses that came along with them.[51]

Although centralized training at Walden & Anderson relieved managers of understaffed stores of that responsibility, five days of simulated training proved insufficient for some. Upon their arrival in their home stores, some new employees had difficulty adapting their training to the realistic environment of customer service and were unprepared to function in all of the store channels. As a result, certain new employees had to be receive further training by experienced coworkers.[52]

6. Pay Increases

On July 28, Williams issued a nationwide memorandum touting the company's strong third fiscal quarter earnings and a revised timetable for the issuance of FY22 pay increases:

[46] The Respondent previously sent numerous corporate and support personnel to Philadelphia, Pennsylvania to deal with the national ramifications from a racial controversy that arose in one of its stores. (Tr. 3370-3373.). In contrast to the Philadelphia situation, however, the evidence failed to show that the number of personnel sent to previously supported markets were anywhere close to those sent to Buffalo in 2021 and 2022. (Tr. 2591, 2630, 2710, 2842-2843, 2856-2857, 3407.)

[47] While it is undisputed that the presence of support managers enabled some store managers to take time off, the record as a whole, including former Transit Commons manager David Almond's credible testimony, established the prime reason for their assignments—to have a manager in the stores at all times. (Tr. 1855-1856, 2710, 2729-2731, 2841-2848, 3095, 3368, 3402-3403, 3461-3462). Almond credibly testified that Murphy instructed him to coordinate his schedule with the support manager to ensure that one of them was always present because employees in his store were actively unionizing. (Tr. 1855-1856). Accordingly, I gave no weight to the testimony by support managers, responding to leading questions, denying that they were instructed to watch and report on the union activities of employees. (Tr. 2987, 3267.)

[48] Pusatier and Mkrtumyan conceded that the Delaware & Chippewa, UB Commons, and NFB stores were adequately staffed. (Tr. 2837, 3401.)

[49] Neither Filc nor Pusatier explained why the Respondent overlooked the need to assign more recruiters to Buffalo prior to September. (Tr. 2847-2848, 2901-2902, 2905-2906.) The severe understaffing at various Buffalo-area stores was obvious. (Tr. 573, 643-644, 683, 719, 929, 1173, 1718, 2728, 2845, 3264, 3402; GC Exh. 167.)

[50] GC Exh. 59 at 2.

[51] It is undisputed that (1) the Respondent previously closed stores in other markets to operate as centralized training facilities, and (2) barista trainers lost the opportunity to earn training bonuses due to the change. (Tr. 307-308, 479, 2220-2221, 2627, 2760, 2849-2851.)

[52] Natalie Wittmeyer, a new hire at the Elmwood store, credibly testified that the several days of simulated training she received at the Walden & Anderson training center did not prepare her to work with customers in a fast-paced store environment with real customers. (Tr. 1760-1763). William Westlake a barista at Camp Road, credibly confirmed that he had the same problem with new employees at his store and explained the additional on-the-job training that he provided. (Tr. 1178, 1762).

> We are moving up our planned January pay increases to Oct. 4. This includes at least a 5% raise for hourly partners hired on or before July 6, and 6% for tenured partners. With this investment, the starting rate for baristas in all markets will be at least $12 per hour, with many markers at or above $15 per hour. We will also continue to ensure at least a 27% difference between barista and [shift supervisor] start rates in all markets. As our business momentum continues, we will look to move up our planned investments in pay to ensure meaningful increases for all partners, just as we did last December and are doing again this year.[53]

On October 27, the Respondent issued a nationwide press release announcing increases for Summer 2022 in the "pay floor" and pay scales for tenured employees—an average pay rate of $17 per hour within a range of $15-$23 for baristas.[54] The announcement also included a higher pay scale for tenured employees than the one mentioned on July 28:[55]

> Effective in late January 2022, partners with two or more years of service could receive up to a 5% raise and partners with five or more years could receive up to a 10% raise.
>
> Additionally, in Summer 2022, average pay for all U.S. hourly partners will be nearly $17/hr.
>
> In December 2020, Starbucks committed to raising its wage floor to $15/hr.
>
> Barista hourly rates will range based on market and tenure from $15 to $23/hr. across the country in Summer 2022.

In January, the Respondent issued seniority-based wage increases to some eligible Buffalo-area employees, but not others. For example, Michelle Eisen, Michael Sanabria, Alexis Rizzo, Gianna Reeve did not receive such an increase at that or any other time. Iliana Gomez, whose store, Delaware & Chippewa filed a representation petition on February 1, complained to her store manager and Mkrtumyan in October about the small pay increase she received at that time. Gomez did receive a small seniority-based pay increase in January (not "even close to ten percent") and complained to her manager that she still made less than another shift supervisor with less time with the company.[56]

[53] Nelson's memorandum on the same date conveyed the same information. (R. Exh. 113-114.)

[54] Eisen, a barista, has been with the company for nearly 12 years. (Tr. 309.) Iliana Gomez, a shift supervisor currently on a one-year sabbatical, has worked for the Respondent for 10 years. (Tr. 1697.) Both credibly testified that they had never received a seniority-based wage increase.

[55] There is no evidence that these wage increases were planned prior to August 23. (GC Exh. 59.)

[56] The credible testimony of Eisen, Sanabria, Rizzo, Reeve, and Gomez established that the January 2022 seniority-based wage increases for some employees—following the annual cost of living raise in October—was unprecedented. (Tr. 309-310, 471-472, 743-744, 1108, 1697-1700.)

7. Store Repairs and Renovations

Repairs and renovations at the Respondent's stores fall under different departments. Renovations generally include scopes of work, higher cost, design, scheduling, and coordination with development teams. Renovation work at stores is typically planned approximately 12 to 18 months in advance. Upon arriving in Buffalo in September, however, Mkrtumyan led a development team that escalated the development process and implemented renovations and repairs at numerous stores within weeks or several months.[57] None of these improvements were planned for prior to September.[58]

Repairs and maintenance are handled by facilities service managers. Michael Bombard has been the facilities service manager for Buffalo, Albany, and Syracuse, New York since before September. Michelle Claytor was the facility services manager assigned to the Respondent's Area 66 covering Indiana and Illinois. At the request of Denise Nelson, the Respondent's senior vice president, Claytor relocated to Buffalo in September. While in Buffalo, Claytor visited and evaluated every store multiple times. Based upon what she observed, Claytor retained additional suppliers and building contractors, and generated and prioritized work orders to implement repairs, maintenance and equipment upgrades in Buffalo-area stores.[59]

8. Level Setting

From time to time, the Respondent has performed district-wide "level settings" (also referred to as "level resets") in certain United States markets. During level settings, store managers meet individually with employees, reiterated company policies and procedures, and remind them of the potential discipline if they fail to comply.

During September and October, district managers and support district managers performed an unprecedented area-wide level setting of stores in the Buffalo market. During individual meetings with employees, the managers reminded employees of company policies and procedures. They focused on the dress

[57] The Respondent's witnesses described the general renovation process throughout the country, including Boston, Massachusetts and Washington, D.C. Contrary to the Respondent's contentions, however, none of the renovations that were implemented Buffalo during Fall 2021 were planned prior to August 23, 2021. (Tr. 2855-2857, 3429-3440.)

[58] Mkrtumyan testified that the Respondent had planned to add a drive-through to the Williamsville Place store but that plan never materialized due to permit issues. Moreover, she did not specify how long that capital improvement had been outstanding. (Tr. 3429.) Otherwise, neither she nor Pusatier specified any other renovations that had been planned prior to September. (Tr. 2855-2857, 3429-3432.) With respect to previously-planned maintenance and repairs, Michelle Claytor, a facilities services manager dispatched to Buffalo by Nelson, failed to identify any such work that would have been performed prior to January but for the organizing campaign. (Tr. 3011-3036.)

[59] Based on the record as a whole and Claytor's failure to explain why Nelson asked her to relocate to Buffalo, I find that Claytor was sent there as part of the Respondent's response to the organizing campaign. (Tr. 3011-3036.)

code, attendance policy, and other policies. At the conclusion of each meeting, the managers required employees to reacknowledge the policies in writing.[60]

District managers and support managers also altered the manner in which employees swapped shifts and picked up unscheduled shifts on their own. Prior to October, Buffalo-area employees typically picked up shifts from or swapped shifts with employees at other stores through third-party chat messaging. That month, the Respondent's district managers implemented a new procedure for Buffalo-area employees by requiring them to obtain managerial approval from both store managers before picking up or swapping a shifts at other stores. Employees were not provided with explanations as to why this practice was implemented.[61]

9. The Listening Sessions

Shortly after the organizing campaign began, the Respondent introduced a novel concept to the Buffalo market—listening sessions for all store employees. The Respondent periodically conducts listening sessions with store employees, including baristas, throughout the United States as a way to assess and address the concerns of the company and its employees. In the past, similar meetings had been held for Buffalo-area store managers and shift supervisors, but none that included baristas.[62]

On September 2 and 3, 2021, the Respondent's executives and managers began holding meetings with baristas and shift supervisors at every store in the Buffalo market. During these meetings, which employees were paid to attend,[63] the corporate officials started with coffee tasting banter and spoke about their own experiences with the company. They would then elicit suggestions and complaints from employees, some of whom urged the Respondent to agree to the "fair election principles" attached to the Dear Kevin letter.[64]

Employees learned of the January 2-3 meetings from store managers or fliers posted in Buffalo area stores. They were paid for attending, regardless of whether it was during scheduled time off, or simply told they could leave their shift and return after the meeting. The Respondent's representatives included Williams, Pusatier, Emily Filc, and Nathalie Cioffi (the Williams Team).

The Williams Team repeatedly stated in these meetings that the Respondent held thousands of listening sessions throughout the country over the past several years. Pusatier clarified, however, that these sessions were "a little but different than others . . . The reason it's different than others is because a group of - - a union called Workers United has filed a petition to hold [an election]. She explained, however, that the Williams Team would not address the Union or the election in these initial meetings. Instead, they wanted to "know how you're [feeling] and what's going on in the stores.[65] Several employees at these meetings expressed skepticism, however, because there had never been any listening sessions in the Buffalo area that included baristas. They also asserted that the meetings were only being held because of the organizing campaign.[66]

a. The September 2 Listening Sessions

There were four listening sessions on September 2. The 2 p.m. meeting that day was attended by approximately 10-15 employees from various stores, including Casey Moore and Roisin Doherty, members of the organizing committee. Moore recorded the meeting, which was led by Williams, Pusatier, and Filc.[67]

Pusatier began her presentation by reminiscing about the past when managers and employees would have milk crate conversations, i.e., meetings where they would pull up and sit on milk crates, and have these types of conversations. She clarified, however, that these encounters were "different than others . . . because a group of- - a union called Workers United has filed a petition to hold (indiscernible)." Nevertheless, Pusatier explained that these initial meetings would not focus on the election. Williams added that the Respondent was still educating its managers on complying with the restrictions of the Act.[68]

Pusatier explained that the Williams Team could not make any promises, but wanted to hear what was going on at the stores and what the employees liked about their jobs. Williams and Pusatier then discussed the benefits of working for the company and the conditions that employees should expect and experiences at their stores. She also described the resources

[60] While it is undisputed that the Respondent performed level settings prior to August in other parts of the country, the record as a whole established that the September-October level setting in Buffalo stores occurred solely as a result of the organizing campaign. (Tr. 3080, 3153, 3202-3203, 3336-3337, 3374-3377, 3385-3386, 3408-3409.)

[61] The Respondent's witnesses provided a host of reasons for this unwritten policy—ensuring that employees were paid correctly, avoiding scheduling and overtime issues, disrupting store operations, preventing the mismatching of skills, and the need to give employees who were not on those chats the opportunity to pick up shifts. (Tr. 2733, 2985-2989, 3060-3063, 3414.) The record lacks any credible evidence, however, that the widespread shift swapping practices in Buffalo prior to October resulted in any of those problems.

[62] It is undisputed that the Respondent has held listening sessions that included baristas in other areas of country. Moreover, although the Partner Guide does not specifically refer to listening sessions, the concept is covered under the section on "Speaking Up at Starbucks:"

We take our commitment to listen and respond to partner feedback seriously. Partner feedback tel1s us how partners feel about working at Starbucks and helps ensure that we stay true to Our Vision and coffee heritage in all that we do.

In addition to participating in Partner Open Forums, town halls and webcasts, partners may visit the Partner Hub to find links to Starbucks direct communication channels. Partners are encouraged to use these channels to provide feedback and comments about the work experience and how Starbucks programs and policies align with Our Mission. (GC Exh. 140 at 132.)

[63] In accordance with New York State wage requirements for employees in the hospitality industry, employees were paid a minimum of three hours for attending listening sessions even if the meetings were not that long. (Tr. 2651.) See N.Y. Comp. Codes R. & Regs. Tit. 12 NYCRR § 146-1.5(a). They were not, however, compensated for the loss of tips, which averaged about 60 to 80 cents an hour. (Tr. 2788.)

[64] GC Exh. 47(a)-(b), 56(a)-(b), 75(a)-(b).

[65] GC Exh. 75(b) at 4.

[66] GC Exhs. 47(b) at 16-17, 56(b) at 22, and 75(b) at 9.

[67] GC Exh. 75(a)-(b).

[68] GC Exh. 75(b) at 3-4, 12.

and innovations underway at the company's Seattle headquarters.

The employees responded with questions, suggestions, and complaints about numerous problems at their stores. They described the hardships due to understaffing, insufficient training of new employees, supply shortages, how they were plagued by fruit flies, and broken equipment. Responding to employee skepticism regarding the timing of the Respondent's attention to the Buffalo-area stores' problems, Williams insisted that its unprecedented market-wide dialogue with employees was unrelated to the Union campaign. She explained that many stores throughout the United States were beset by the same problems, including staffing and training issues. Williams also mentioned that the company previously added recruiters in order to accelerate the hiring of new employees. With respect to the pressures expressed by the store's employees, Williams said "that is something we can change." She also "guarantee[d] that every experience or hope to guarantee that every experience you have in the store is one that makes your day a better place."[69]

Rachel Cohen, a shift supervisor at the Sheridan and Bailey store, recorded the 5 p.m. meeting on September 2. Approximately 14-18 employees attended.[70] The meeting, led by Williams, Pusatier, Cioffi, and Filc, was similar to the earlier session. The Williams Team introduced themselves, mentioned that they had done these listening sessions in other districts for years, spoke about their experiences working for the Respondent, asked the employees to share their experiences, and extolled the benefits provided by the company. Characterizing the purpose of the meeting as just a confidential conversation with the employees, Williams clarified that her team was there address their issues:

> We will take key things and go back to say, the key things regarding here, which I'm sure we might here again, is that - - in some stores there's some staffing challenges, and then once we hire people, there's training challenges, and there's a lot of new Partners. And so trainers and hours, that's putting a lot of pressure on stores. So we heard that as a theme. . . . we're looking for themes. So that's one theme. We've heard some themes around facilities and getting things fixed in a timely fashion. So we will take that away and we will find out - - we'll get into the details of how many times are called in, how long does it take to get things fixed.[71]

Employees took up the offer to share. They complained about facility and equipment issues, staffing, training, shift managers' inability to close channels in certain situations, and supply shortages. Williams replied that the company was already addressing some of those issues, including adding additional baristas who were willing to go, on any given day, to a short-staffed store in a district. She also spoke at length about the resources available to the company's executives and planners at their Seattle headquarters, and the constant research conducted there by data scientists.[72]

b. The September 3 Listening Sessions

The early afternoon listening session on September 3 was run by Williams, Pusatier, Filc, and Cioffi. Between 10-20 employees attended, including Alexis Rizzo and Kellen Higgins.[73] Rizzo, a member of the organizing committee, recorded the meeting.[74] Once again, the Williams Team opened with a cautionary statement regarding the purpose of the meeting and the Respondent's desire to comply with the Act:

> [W]e can't make any promises to you, nothing is going to come out of this, and you know, we're not going to be making commitments, but . . . that doesn't change the fact that we're here to have an open conversation with each other as partners, and we're here to listen, and we're here to talk.[75]

The Williams team then asked the employees to discuss their experiences working for the company. They invited questions and comments, and the employees responded by expressing concerns relating to staffing, training, the inability of managers to close channels when necessary, supply shortages, broken equipment, pressure to speed up drive-through transactions, and fruit fly and bee infestations.

Williams acknowledged employees' complaints about inadequate staffing during the previous day's sessions, and explained that the Respondent hired 36 recruiters four months earlier and ramped up hiring across the United States. She also explained the elaborate and constant planning and testing processes at the company's Seattle headquarters' testing laboratories. Williams promised to follow up on all of the complaints. With respect to the Buffalo-area stores needs for additional staffing and training, she noted: "It may have to be that they get hired in a central store until we can get staff." The meeting concluded with Filc urging the employees to fill-out surveys that were handed out.[76]

c. The Individual Store Listening Sessions

After the initial district-wide meetings, the Williams Team, joined by Peck and other high-level corporate officials, held multiple listening sessions for each store in the Buffalo area. Those meetings, discussed below, were held in stores or hotel meeting rooms.[77] They followed similar patterns. The meetings were led by members of the Williams Team and usually started with polite banter and coffee tastings. The Williams Team would then shift to issues in the workplace. At some

[69] GC Exh. 75(b) at 48, 57-58.
[70] GC Exh. 56(a)-(b).
[71] GC Exh. 56(b) at 6.
[72] GC Exh. 56(b) at 24-33.
[73] Rizzo estimated that 10-12 employees attended (Tr. 696.), while Higgins estimated that 20 attended. (Tr. 594-595.)
[74] GC Exh. 47(a)-(b).
[75] Id. at 17-18.
[76] GC Exh. 47(b) at 37-94.
[77] The Respondent frequently objected when witnesses testified that the meetings after September 3 were mandatory. Although the record established that the Respondent's supervisors and agents never actually used that term, numerous witnesses credibly testified that: the meetings were placed on their schedules; they were told by managers to attend; they were paid to attend; or told that they would need to reschedule if they could not attend. (Tr. 580, 596-597, 755.)

point, the meeting would pivot to discussion of the Union. The Williams Team would express the importance of voting "no" in any upcoming election. They would also comment that employees could not "know" that union membership would necessarily benefit them, then point out that employees could come away with fewer benefits. When pressed by employees for specifics, the Williams Team replied that they did not know and were just learning about unions.[78]

10. The Schultz Speech[79]

On Saturday evening, November 6, all of the Respondent's Buffalo-area stores closed early so all Buffalo-area employees could attend a meeting with Schultz at a downtown Buffalo hotel. As usual, employees were paid to attend the meeting. Employees were told that parking would be free. That turned out not to be the case and employees ended up paying for parking.[80]

Pusatier started the meeting with the usual coffee tasting and turned it over to Schultz. At the outset, Schultz explained that he was surprised to hear in October about the problems in the Buffalo market. He told the managers to address them and schedule a meeting in thirty days with all of the area's employees. Schultz spoke about his blue collar upbringing in public housing in Brooklyn, New York, his family's misfortune after his father was laid off and they had no health insurance, and how those experiences shaped his business philosophy and practices. He also spoke about the company's past 50 years, growing from a few stores in Seattle to an international corporation in 2021 with 35,000 stores, 400,000 employees, and 100 million customers.

Schultz outlined several major employee benefits that the Respondent has provided: health benefits beginning in 1989; bean stock (shares in company stock) in 1991; and the creation of an emergency Cup Fund managed by employees (disbursements for emergencies). He also shared that over the past 40 years he has always left two empty chairs in the Respondent's quarterly Board of Directors meetings—one representing the company's customers, the other for its employees.

Schultz mentioned repeatedly that, notwithstanding all of its achievements, the Respondent was "just getting started" with various innovations to improve its products and services. He stressed that the business was personal to him, "we have to do it together," and neither the company nor its employees could do it alone. The company's core purpose, Schultz said, was "to build the kind of company that creates a fragile balance between profit and doing the right thing."

As Schultz left the room, Gianna Reeve, a shift supervisor at the Camp Road store, attempted to speak with him. Unsuccessful, Reeve identified herself as an organizing member of the Union and asked, "how many of us are wearing Workers United shirts right now?" Cheered on by supporters, derided by others, and urged by company officials to stop, Reeve persisted. She pleaded, "please let partners speak" and urged the company to sign the fair election principles. As the meeting concluded, Peck proclaimed that the company was building something "incredibly special" with its employees and promised to solve the problems in their stores:

> You deserve it. And again, we haven't gotten it right. But we are absolutely, we're up with everything we have to get this right for you, and for each other.

H. Elmwood

1. Union Activity

After the organizing campaign went public on August 23, baristas Michelle Eisen, Mikaela Jazlyn Brisack, and other Elmwood store employees began displaying their support by wearing prounion pins on their aprons. The Respondent responded soon thereafter. On August 26, David LeFrois, the district manager came to the Elmwood store and parked himself in the lobby with his laptop computer. He returned almost every day thereafter until he was separated from the company a few weeks later. Prior to August 23, LeFrois was rarely seen at that store.[81]

The Elmwood Store employs two of the most visible leaders of the organizing campaign—Michelle Eisen and Mikaela Jazlyn Brisack. Around late August, Brisack told her manager, Patty Shanley, that the union campaign "isn't a personal thing. This isn't about you." Shanley replied that the campaign was happening because there was a disconnect between her and the employees. Brisack disagreed and Shanley replied that she would not be able to help baristas on the floor anymore if they brought in the Union. Once again, Brisack disagreed but Shanley replied that employees did not know what would be negotiated and would be "shooting ourselves in the foot."[82]

On August 30, Elmwood store employees filed a petition in Case 3-RC-282115 to represent the following employee unit (the bargaining unit):

> Included: All full-time and regular part-time Baristas, Shift Supervisors, Asst. Store Managers. Excluded: Store Managers; office clericals, guards, and supervisors as defined by the Act.[83]

[78] Although some employees, including the Respondent's witnesses, considered these meetings to be optional, most witnesses called by the General Counsel believed they were mandatory because their managers scheduled them to attend, or told or encouraged them to attend. (Tr. 186, 232, 555-557, 561, 580, 585, 616, 713, 1096, 1224, 1228, 1283, 1712, 1752, 1772-1773, 2110, 2431, 2643, 2650-2651, 2868-2869, 3423.)

[79] Joint Exh. 1.

[80] The parking tickets were validated but did not work when employees left the hotel garage. Nor were employees reimbursed for the cost of parking. (Tr. 563, 1109-1110, 1415.)

[81] Eisen, who provided three days of credible and detailed testimony, saw LeFrois at the Elmwood store only one time in her 12 years working there. (Tr. 93.)

[82] Brisack's testimony was credible, spontaneous, and quite cooperative during cross-examination. (Tr. 1517-1518.)

[83] The Union listed similar language for the proposed bargaining units in the Genesee Street and Camp Road store petitions filed on the same day, as well as the subsequent petitions for other Buffalo area stores.

2. Williams Team Visits

On September 4, the Williams Team visited the Elmwood store. It was the first time that Williams or any other company president had visited the store, at least during the last decade. Peck had come to the Elmwood store once before—in early Summer 2020 to congratulate staff for meeting its sales goal. A regional director had not visited the store for at least five years. While there, the Williams Team assisted with beverages, spoke with customers, and handed out gift cards to those waiting for beverages. At one point, Williams went to the back of the store where Brisack was on her 30-minute lunch break. Shortly thereafter, Williams joined her. Williams thanked Brisack for attending the September 2 listening session, and explained that she was there to follow up on matters brought up at that time, such as carpet replacement and improved training.[84]

3. Support Managers

As the Elmwood store manager, Shanley performed administrative duties and helped out on the floor. Shanley worked 40 hours per week at the store. As such, a manager was not always present in the store. That changed in mid-September when the Respondent dispatched the first two support managers—Dustin Taylor and Matt LaVoy—to Elmwood. Both worked 40 hours per week, ensuring that there was always a manager or support manager in the store at all times. Taylor and LaVoy would assist Shanley or others with orders on the floor. Taylor would also do the scheduling with Shanley or by himself. He also assumed responsibility for employee promotions. Support district manager Kelly Roupe also met with Shanley and the support managers from time to time.

Another support manager was brought in for two weeks around late October when either Taylor or LaVoy went on vacation. Taylor and LaVoy were replaced in late December by another support manager, Catherine Posey. Posey performed the same functions as Taylor and LaVoy, and remained until at least mid-January 2022.

Ana Gutierrez, an operations manager, also worked at the store on several occasions during October. On October 21, she was assisting by handing off prepared drinks to customers. Eisen noticed that Gutierrez was wearing a bracelet and large rings, and had painted nails. Eisen approached her shift manager, protested that Gutierrez's jewelry and nails violated the dress code, and asserted that a store employee would have been sent home. The shift supervisor acknowledged the complaint but did not act on it.

Eisen regularly worked the morning shift. Prior to the arrival of support managers, however, the rest of the morning shift staff fluctuated depending on employee availability. That changed after Taylor became involved in scheduling, as Eisen found herself working consistently alongside a group that included employees who were openly supportive of the Union—Brisack, Jeremy Pasquale, Emily Hersch, and Angela Dudzik.[85]

4. Staffing

Elmwood was often understaffed prior to October 24. On that date, the Respondent hired six new baristas for the Elmwood store. Also, one employee transferred from another store. That brought the number of baristas and shift supervisors at Elmwood to 36. The increase in personnel resulted, at times, in overcrowding behind the counter and chaotic working conditions. Moreover, the additional employees reduced each employee's share of customer tips. In addition, and contrary to what corporate officials told employees in listening sessions, Shanley reduced employees' hours in order to apportion them to the added employees.[86]

Over the next seven months, however, Elmwood lost 19 employees and brought in two transferred employees. No more employees were hired until June. That month, the store hired three employees, bringing the number of its baristas and shift supervisors to 23. Employee attrition worsened by the spring to such an extent that one call-off could result in Elmwood not having enough staff to open.[87]

In November, Shanley text messaged Brisack and asked if she would be okay with shorter shifts so some of her hours could be given to new employees. Shanley explained that the Respondent was cutting employee hours at Elmwood.[88]

5. The Listening Sessions

a. September 9

On September 9, the Williams Team held a listening session

[84] These findings are based on Eisen and Brisack's undisputed testimony. (Tr. 114-117, 1519-1521).

[85] These findings are based on Eisen's credibly detailed and undisputed testimony. (Tr. 98-114.) In fact, Mkrtumyan, Murphy, Pusatier, and Alumbaugh all confirmed that support managers assumed responsibilities for employee scheduling and promotions. (Tr. 2729-2731, 2843, 3460-3461, 3095.)

[86] Elmwood, which received substantial business from a nearby university, reduced hours around Thanksgiving. (Tr. 3428-3429.). However, Mkrtumyan did not refute Brisack's credible testimony regarding Shanley's reasons for reducing employees' hours. (Tr. 1540-1541.)

[87] I based these findings on Eisen's credible, detailed, and undisputed testimony that: (1) Elmwood employees consistently told company representatives in listening sessions prior to the hiring flurry in late October that the store was sufficiently staffed; (2) the ideal number of staff for peak time was 8 and 4-5 for non-peak time; (3) on at least one occasion, there were 12 to 14 employees working on the floor; and (4) the additional personnel "put us well over what would be a normal capacity on the floor behind the counter, which created a whole bunch of different effects in terms of tripping over people, in -- in -- in that regard. It also shortened our tips. The more people that are working, equals the more hours worked, and the way that tips are processed, it's dollars divided by hour." (Tr. 294-301; GC Exh. 33.) As to when additional staff arrived, however, I relied on the detailed and undisputed testimony of Natalie Whittmeyer. (Tr. 1764.)

[88] Brisack credibly described her conversation with Shanley (Tr. 1540-1541.). Mkrtumyan, on the other hand, did not dispute that Shanley was trying take hours from Brisack and give them to newly hired employees. Instead, she simply recalled that the Elmwood store's hours of operation were impacted by the drop in customer traffic due to the University of Buffalo's Thanksgiving break. (Tr. 3428-3429.)

at the Elmwood store. Eisen recorded the meeting.[89] During this meeting, they continued informing employees about the remedial actions underway to address employees' concerns, including those relating to training, staffing, facilities and equipment issues. Williams explained that they were there to address those problems "with immediacy and urgency, in the stores that need it. . . . " The Respondent's plan did not end there, however, as Williams segued into the oft-repeated vague reference to the "Starbucks experience:"

> Williams: Not every store needs it. Because there weren't enough stores in this market that we felt the experience was the Starbucks experience, which was you go home every day, and you say that with a very (indiscernible) work at Starbucks. And that's what our goal is, that's what the Starbucks experience is. And that's what you should – that's what you should expect from us, is that type of support. So just wanted to share that with everyone because I'd love to get any other ideas or any other suggestions that you have that you would [like] us to hear. We are talking with every partner in this market. All 20 stores, 18 stores, 19 stores. We'll get to most of them already. We are talking to as many partners as we possibly can to get your input and your insight and what your experience is because that's what we do at Starbucks.[90]

The Williams team also addressed the union election at various points during the meeting. She expressed the Respondent's belief "that voting in favor of a union is the best for you." Peck also urged employees to vote "no:"

> Let's take the—maybe , the rest of the time we have together really to talk about the union, you know, petition in your store and answer the questions that you may have. Rossann mentioned, we don't believe the union has a place at Starbucks. We believe our relationship is directly with you, as our partners. Partner to partner. As we always have. And that partnership is really crucial and (indiscernible) value. And that's really important to us. But we also want to make sure that every single partner was–we want every partner to vote no. We also want to make sure that you have all the facts to make the best decision for you.[91]

b. September 10

During the September 10 meeting at the Elmwood store, Williams restated the Respondent's practice of listening to employees about their concerns and suggestions was not unique to Buffalo.[92] Peck and Pusatier stated that they were there to talk about things they had learned from those meetings and explain what was being done to "remedy" those problems "now." They identified substandard working conditions in the Buffalo market, including staffing shortages, callouts, and training.[93] Pusatier, however, noted the diminution in the Respondent's ability to resolve the Buffalo market's problems if the Union got involved:

> We're going to . . . fix that. But we believe that if a union gets in the middle of that relationship, it's not . . . going to be a good fit for us because we believe a more powerful partner to partner . . .[94]

c. September 19

On September 19, the Williams team held three listening sessions with Elmwood employees at the Windham Garden Downtown Hotel. The store's employees were asked to take attend one of the meetings. Brisack recorded the meeting that she attended.[95] During that meeting, Williams, Peck, and Pusatier updated the employees on various changes coming to Elmwood. They also expressed their opposition to union representation:

> Pusatier: And then, you know, all of this stuff came from talking to partners and talking to every single one of our partners to find out what's important to them. And truly is foundational and who we are at Starbucks. And so it is because of that I really believe that our most effective form of communication is between us and each individual partner, and that we don't need somebody in between us to be able to represent a voice for every single partner. It's really about that direct conversation with every single person who works here.[96]

> Williams: So we own fixing communication that's what you're looking for. Hold us accountable to fix communication. A third party's not going to fix communication for you. They're just speaking on your behalf. And they're negotiating a contract with you, your employment contract. It's speaking on your behalf. [97]

> Williams: And then, there's, you know, benefits that you would hope you would gain. We've talked about, I guess, some of the ones that you're hoping for. But typically, you know, it's wages, it's hours, it's benefits, and it's working conditions. And we need to understand, like, what is the – what are the possibilities of what could happen? You may end up with higher wages. They might offset the dues. You may end up with similar wages or benefits, or maybe different.[98]

> It's just – it's a third party. And its honestly something we honestly don't believe we'll need because you already have a

[89] GC Exh. 35(a)-(b).
[90] GC Exh. 35(b) at 20-21.
[91] Id. at 17, 32.
[92] GC Exh. 26(a)-(b)
[93] GC Exh. 26(b) at 5-7, 12.
[94] Id. at 16-19.
[95] GC Exh. 37(a)-(b).
[96] Id at 15.
[97] Id. at 24-25.
[98] Id. at 37-38.

seat at the table.[99]

Eisen attended and recorded one of the other meetings that day.[100] As in the other meeting, the Williams Team updated the employees on the changes coming to the store, including its closure for a week for renovations to replace the flooring and resolve the problem with leaking water. Peck, however, characterized the Respondent's mission as signifying much more:

> What we learn here in Buffalo, what we have learned , and what we are doing is going to raise the entire brand and system up.[101]

The Williams Team again voiced their opposition to union representation. They reiterated their reluctance to have anyone come in between their partner-to-partner relationship with employees and stressed that the Union—not the employees themselves—would be the ones to make the decisions at the bargaining table. Again, they spoke about the impact that unionization might have on benefits and the ability of employees to pick-up shifts between union and non-represented stores.[102]

d. October 1

On October 1, the Respondent closed the store to hold a listening session there for Elmwood employees. Employees were told that they needed to attend the meeting and a meeting notice was posted on the refrigerator. Peck, Szto, and Chris Stewart from Partner Resources attended. Eisen recorded the meeting.[103]

Szto started with a rundown of the company's efforts to replace old and broken equipment, eradicate pest issues, increase staff, and improve training. He then told the employees that the company wanted to address any concerns they might have:

> I'm not sure if any of you have had any performance development conversation yet. If you haven't, that's coming. So that's an opportunity for you to share what you want to do at Starbucks, what your aspirations are, and how can we best support that.? So that's coming. Your store managers will be scheduling that with you and we're supposed to be, hopefully, completed by November 4th.. That's kind of the time line we're looking at. So it's an opportunity for you to share what's important to you. Where did we get the most development? And they're going to spend that time with you.

Szto also explained that the Respondent was training 67 new employees that would be distributed throughout the district. When Eisen asked if stores would be still be getting new employees if they were not short-staffed, Szto responded equivocally: "Well, if they feel they're staffed - - most stores, though, have needs." Eisen replied that the Elmwood store was not short-staffed and did not have any issues with call-offs or staffing. Neither Szto nor Peck disagreed.[104]

Like the UB Commons store, the Elmwood store also employed college students. In response to Kellen Higgins' concerns about employees having their hours cut from "overcrowding in stores when people's availability become open again," Szto acknowledged the dilemma but deflected: "So I think it's more of a conversation that you would have with your store manager."[105]

Peck also informed the employees about the Respondent's planned reset, i.e., improvements coming to the store in mid-October:

> So we're coming in and making sure that, number one, you've got the right tools and equipment, but also, the new stations are - - are laid out properly. Sometimes, over time, things just get a little but out of whack. So we're getting those set up properly and making sure that you've got everything you need in the store. That's called a rest. We're going to do the remodel first for this store, and then right as we're completing the remodel, we're going to do the reset here so you've got it all - - everything that you need.[106]

Chris Stewart spent much of the meeting discussing the potential and likely effects of unionization on employees' terms and conditions of employment. During the meeting, employees referred to the July 28 wage pay increase as minimal and urged the Respondent to adjust it to account for inflation. Eisen also raised the issue of seniority pay. One employee said that the raise was not enough because simpler jobs—such as scanning groceries and stocking shelves—paid more than they earned performing more skilled tasks. Peck and Stewart assured the employees that the Respondent was looking to fix the pay compression problem.[107]

e. October 20

On October 20, Elmwood store employees were assigned to attend one of three meetings scheduled for that day—at 4 ,p.m. 6 p.m., and 8 p.m. The store closed early at 3 p.m. Employees were notified in individually addressed invitations delivered by the support managers and scheduled to attend one of the meetings.

Eisen was scheduled to attend the 8 p.m. meeting, but was unable to make it at that time. She did attend the 6 p.m. session and recorded the meeting.[108] The meeting was run by Peck, Ana Gutierrez, and Nathalie Cioffi. During this meeting, Eisen again complained about the amount of the hourly wage increases, comparing the Respondent's excellent financial condition and million dollar salaries of company executives to her coworkers' low wages, asserting that half of them qualified for

[99] Id. at 60.
[100] GC Exh. 27(a)-(b).
[101] GC Exh. 27(b) at 20.
[102] Id. at 23-35.
[103] GC-Exh. 28(a)-(b).
[104] GC Exh. 28(b) at 8-9.
[105] Id. at 16-18.
[106] Id. at 11-12.
[107] Id. at 44-55.
[108] GC Exh. 29(a)-(b).

public assistance.[109]

f. November 8

On November 8—one day before ballots were mailed to employees—the Respondent held its last set of meetings with Elmwood employees at the Hampton Inn hotel,. Again, employees were hand-delivered invitations scheduling them for one of two meetings—at 5:30 p.m. and 8 p.m.[110] Eisen and Cassie Fleischer were assigned to the 8 p.m. meeting, but attempted to attend the 5:30 p.m. session.

When Eisen arrived, Pusatier told her that she was scheduled for the 8 p.m. meeting. Eisen explained that she was unable to attend that meeting because state law prevented her from being at the store past 8:30 p.m. and working the opening shift the following morning.[111] Pusatier replied that "we'll probably have to do the makeup meeting" because "[w]e're just trying to keep each [meeting] as intimate as possible." Eisen, who recorded the entire discussion, replied that she would "definitely not be doing the makeup" and expressed her disagreement:[112]

> Eisen: Because four people scheduled for this meeting are not coming. So you should not be over capacity in any way, shape, or form.
>
> Unidentified speaker: Well, (indiscernible)
>
> Eisen: Okay, I mean, it seems pretty insane that I wouldn't be welcome to a meeting at my store when it's not a capacity issue. I mean, if it's an intimate group issue there's four people who are not coming, then it's not an over capacity issue, correct? I mean - -
>
> Pusatier: When we schedule meetings we scheduled meetings with this group.
>
> Eisen: You scheduled meetings based on keeping certain people apart from certain people. Then there shouldn't be any reason that I can't attend this meeting.
>
> Pusatier: We - - we scheduled this to keep it smaller group, and then so we can do a one-on-one with you.
>
> Eisen: But it's still an intimate group, because four people who are scheduled have texted me to tell me they are not attending this meeting.
>
> Pusatier: We - - we haven't heard that. So (indiscernible).
>
> Eisen: Okay, then I'll just wait until they don't show up, and then I should be able to attend.
>
> Pusatier: (Indiscernible, simultaneous speech) we'll do a one-on-one.
>
> Eisen: I have no interest in doing a one-on-one.
>
> Pusatier: That's okay then.
>
> Unidentified speaker: Okay, You don't have to.
>
> Eisen: But I do have an interest in getting paid for the time I was scheduled.
>
> Pusatier: - - we can pay you for the other meeting. The one you were scheduled for.

Eisen recapped Pusatier's position, asked again why she could not attend if the meeting would be under capacity, and offered to show Pusatier the text messages from those who were not coming. Pusatier declined the offer and told Eisen to "sign in for your time, but we're not going to have you stay for this."[113]

Fleischer also attempted to attend the meeting, but was turned away by Roupe. When Fleischer explained that she too was unable to attend the later meeting, Roupe said that she would have to make it up in a one-on-one meeting.[114]

The Respondent was represented at the 5:30 p.m. meeting by Denise Nelson, senior vice president for U.S. operations, Murphy, Pusatier, Roupe, Taylor, and Kathleen Kelly (partner resources). The meeting was recorded by Brisack.[115] Murphy opened by explaining that she was there to support Mkrtumyan. She explained that the meeting would focus on the election, but not before detailing some of the remedial actions that had been taken since the start of the campaign. When asked by Brisack why Eisen and Fleischer were not permitted to attend, Murphy attributed the reason to COVID protocols.[116]

Kelly then provided a PowerPoint presentation explaining the process for completing and submitting the ballots once they received them. The meeting became contentious, as several employees expressed skepticism regarding the Respondent's intentions.

Nelson, Murphy, Pusatier, and Kelly were present for the 8 p.m. meeting.[117] Murphy's opening was similar to her remarks at the earlier meeting—a rollout of changes and improvements underway. She also alluded to the significance of Schultz's remarks a few days earlier as a prelude to sunnier days ahead:

> At the core of who are, the experience that we all got to have

[109] GC Exh. 29(b) at 25-36.

[110] Eisen conceded that the letter did not literally state that the sessions were mandatory. (Tr. 356-358.)

[111] Eisen conceded on cross-examination that she later learned that the seven-hour turnaround restriction was rooted in company policy, not state law. (Tr. 385-387.)

[112] GC Exh. 30(a)-(b).

[113] GC Exh. 30(b) at 4-7.

[114] In contrast with Eisen, Fleischer did not testify as to whether she too was scheduled to open the following morning. (Tr. 236-237, 241-245.) In addition, Fleischer was not a known union supporter until "the day of the vote count" on December 9. (Tr. 2057.)

[115] GC Exh. 115(a)-(b).

[116] GC 1115(b) at 23-24.

[117] GC Exh. 133(a)-(b).

> this weekend with Howard Schultz was definitely one for the books. He talked a lot about love, humanity, respect, and dignity. Any truly, what started the heritage of this company, and how we got to this place with the incredible benefits that we have. So if you like being a partner now, it just gets a whole lot better from here.[118]

Murphy then reported that the Respondent appealed Region 3's determination that each of three petitioning stores would vote as separate bargaining units rather than one unit. When an employee questioned the Respondent's rationale, the Respondent's representatives launched into a series of scenarios that would adversely impact the employees if they voted as three separate units in favor of the union.

First, Murphy and Pusatier asserted that employees from unionized stores would be unable to pick up shifts at other stores and somehow impact how employees are promoted.[119] Second, Pusatier, referring to the Respondent's one unionized store in Canada, implied that unionized New York employees would miss out on any announced nationwide wage increase:

> So for example, just in the same way we announced wage increases across the U.S., we also announced wage increases in Canada. And unfortunately, the partners in the unionized store, because of the collective agreement being three years long, they actually do not get those increases.[120]

Third, Murphy claimed that unionized stores would be unable to borrow employees from other stores because "union shops don't want nonunionized folks to work in their shops." Fourth, Kelly stated that the employees in the unionized Canadian store ended up bargaining for a higher hourly wage rate that was only slightly above the cost of the union dues. She added a side note that no other stores in Canada "have followed suit." Along the same line, Murphy, recounted her past experiences as a unionized employee who received wage increases of five cents over the state minimum wage. Nelson reminded the employees that neither the Respondent nor the Union could promise them anything because during collective bargaining, employees "could end up with more, you could end up with the same, and you could actually end up with less." Murphy then rattled-off a list of the existing benefits provided by the Respondent.[121]

Nelson insisted that the Respondent was listening to employees' concerns, was "working as quickly as we can to make it better," and implored the employees to give the company a chance by voting against union representation. She asserted that nobody needed to represent employees because the company wanted to "hear all of your voices ourselves. And that's why we're all here. As the meeting concluded, Nelson asked employees "to vote to keep the direct relationship with us," and urged them to provide feedback to their store and district managers.[122]

6. Managers Encourage Employees to Vote Against the Union

As the election approached in early November, the Respondent began to take a more aggressive approach to the election. Shanley, along with Roupe, met individually with certain Elmwood employees to discuss the election. After finishing a two-on-one meeting at a table in the store lobby, they asked the barista to tell Natalie Whittmeyer, who was in the middle of her shift, to meet with them. During their meeting with Whittmeyer, the managers encouraged her to consider her "relationship with the company," and vote against representation. They urged Whittmeyer to give the company a chance to prove that it could fix the problems that upset the Union's supporters. Shanley and Roupe they told her that if the company prevailed in the election and did not satisfactorily resolve those problems, the Union would be eligible for another election in one year, and she could vote "yes" then. The conversation lasted about 10 minutes.[123]

Around the end of November, barista Kellen Higgins (formerly Montanye) was helping Shanley load supplies into the latter's vehicle in the store's parking lot. After they finished loading, Shanley pointed to Higgins' Union pin and asked Higgins if "you support this?" After Higgins replied in the affirmative Shanley said she respected that decision and it did not change her personal view of Higgins. Higgins stopped wearing the Union pin until early January.[124]

7. Renovations

The Respondent typically plans store renovations 12 to 18 months in advance. After August 23, however, the Respondent renovated or remodeled numerous stores Buffalo-area stores within a few months after visiting the stores.[125]

Sometime in early September, corporate and facilities personnel toured the Elmwood store. Soon thereafter, the stained carpet in the backroom/employee breakroom was removed and the room was remodeled. Besides being dirty, employees suspected the carpet of contributing to the fruit fly infestation. The store remained open during that time.[126]

In mid-September, Shanley told Elmwood store employees that it would be closed for renovations during the week of October 11-17. During that week, the Respondent repositioned the coffee bars and added a digital screen displaying the status of customer orders.

Sometime between October 12 and October 16, Brisack was drinking coffee in the lobby of the Sheridan & Bailey store. Williams and Modzel were also there. At some point, Williams approached Brisack and updated her on the remodeling of the

[118] GC Exh. 133(b) at 6.
[119] Id. at 8-9.
[120] Id. at 13-14.
[121] Id. at 15-18, 44.
[122] Id. at 27-35.
[123] Whittmeyer credible and detailed description of this meeting was not refuted. (Tr. 1764-1767.)
[124] I based these findings on Higgins credible and undisputed testimony. (Tr. 623-624.)
[125] Neither Mkrtumyan nor any other management witness testified about specific renovations that were planned for any Buffalo-area store prior to August 23. (Tr. 3429-3430, 3479.)
[126] Eisen provided the details regarding the Elmwood changes. (Tr. 286-289.)

Elmwood store. Brisack asked if every store in Buffalo was being remodeled. Williams responded that every store that requested remodeling would get one. Brisack said she was not aware that the Elmwood store had asked for a remodel. Williams explained that Elmwood store employees yearned for more space behind the bar.[127]

When employees returned on October 18, several employees commented to Taylor on the insignificance of the changes. Taylor told the employees not to worry, referred to it as a "fake remodel," and said the "real one" was scheduled for early spring or later winter of 2022.[128]

8. The December 9 Election

In the December 9 election, the Union prevailed with a majority of ballots cast. On December 17, the Board certified the election results.

9. Cassie Fleischer

Fleischer was employed by Respondent from June 2017 until April 2022. She worked at several locations, including the Elmwood store from July 2020 until April 2022. She worked full-time hours from 2018 until February 2022. Fleischer became active Union supporter at the Elmwood store in November and became an active member of the store's bargaining committee. She was a member of the Elmwood bargaining committee, participated in bargaining sessions, and helped to organize a strike at Elmwood in January. Fleischer wore a prounion pin at work and expressed support for the Union on social media. She also provided multiple media interviews about her support for the Union.

Prior to February, the Respondent did not impose or enforce a minimum availability requirement, with some employees even approved to work as little as one day per week.[129] Fleischer's availability to work at the Elmwood store was consistently 30-35 hours over a five day period. On February 3, she accepted a full-time position with another company. Preferring to continue working at the Elmwood store on a part-time basis, Fleischer submitted a request on the Starbucks Partner Hours App to reduce her availability to two days and 12 hours per week, and only on Friday nights and Saturday mornings. She also text messaged Shanley letting her know about the request. On February 7, Shanley replied that they would speak the following day. Fleischer also noticed that her availability request had been denied in the Partner Hours App. There was no notation as to why it was denied.[130]

On February 8, Fleischer met with Shanley in the back room.[131] Regarding Fleischer's reduced availability request, Shanley explained that "the problem is, obviously, you know they're tightening it up with, you know, availability, all that kind of stiff. So I don't know where that's going to put us exactly, you know."[132] She told Fleischer that she needed to consult with Murphy. Shanley suggested that if Fleischer increased her availability to 18 to 20 hours, it would give her more flexibility to schedule Fleischer, since Eisen had already been approved to work one day per week. She also explained that other employees were willing to work more and Shanley did not want to take hours from them. Shanley then asked Fleischer to add Sundays to her availability, but Fleischer declined. The meeting concluded with Shanley suggesting they meet again on February 10.[133]

Fleischer and Shanley spoke again on February 12.[134] On the same day, the Washington Post published an article profiling her contributions to the organizing campaign. In their conversation, Shanley told Fleischer that her proposed availability was not going to "fit . . . the hours that I need to have a partner available." She explained that such an arrangement "was leaving me in the position where I - - I don't have - - I don't necessarily have hours to give you on just those two days. . . . But I - - us, with the hours that we have , and that - - you, that we're probably going to end up moving to, that flexibility of hours, it doesn't - - you know, it's not going to fit with what I'm needing at this time."

Shanley suggested Fleischer consider taking a leave of absence or being terminated and reapplying if the new job did not work out. She also said that an employee could only remain unscheduled for three weeks. Fleischer replied that she was hoping to work both jobs for one month based on her availability and then reassess her situation. Shanley replied that she had to consider numerous scheduling changes and told Fleischer that she needed at least 20 hours and a "five-day flexibility" per week. Fleischer then asked if this new availability requirement was "a companywide thing that we're trying to get back to, or is this just, like right now in this district we're working on it?" Shanley replied that "it's companywide. Because I know when I was working with Julia at Main and union, that was always her rule." She concluded that Fleischer would work Friday and Saturday, and she would getting additional hours covered, and then "we're going to come back and see what your decision is."[135]

Fleischer and Shanley briefly spoke again on February 16.[136] Again, Fleischer confirmed that her availability would be limited to Friday evenings and Saturday mornings. Shanley re-

[127] Contrary to the Respondent's assertion, that it did not renovate every store that requested it is immaterial. Williams made the promises and, in some instances, the Respondent did not deliver. (Tr. 1541-1561.)

[128] Eisen's testimony regarding Taylor's comments was also undisputed. (Tr. 290-291.)

[129] This was consistent with the Respondent's practices across the Buffalo market. (Tr. 1567.)

[130] The Respondent did not dispute Fleischer's credible testimony regarding the unexplained denial of her reduced availability request on the Partner Hours App. (GC Exh. 139; Tr. 2022.)

[131] Fleischer recorded all of her discussions with Shanley about her availability. (GC Exh. 141(a)-(b).

[132] It is undisputed that, although the Union had already been certified as the exclusive bargaining representative of Elmwood store employees, the Respondent neither bargained with the Union over the new policy nor notified the Union of its intent to change the availability policy. (Tr. 1568).

[133] GC Exh. 141(b) at 3-4.

[134] GC Exh. 142(a)-(b).

[135] GC Exh. 142(b) at 2-11.

[136] GC Exh. 143(a)-(b).

plied that she would see what she could do about scheduling Fleischer for just two days the following week.[137]

On February 18, Fleischer attended a bargaining session at which Murphy was present. On February 18 and 19, Fleischer and Shanley exchanged text messages and agreed that Fleischer would meet Shanley at the store on February 20.[138] February 19 was also Fleischer's last shift.[139]

On February 20, Shanley stated that she could not accommodate Fleischer's availability, she needed at least 15 hours per week, and it did not "[meet] the demands of the business."[140] She gave Fleischer conflicting information, first stating that she needed at least 15 hours, then stating that "I can't even give you all those hours to begin with." Shanley told Fleischer that she "should be terming it as of today, really. You're not coming back. I'm not going to. I'll wait a couple of weeks, see." She said that Fleischer would not be on the schedule going forward and she would be terminated after several weeks, but eligible for rehire. Fleischer asked what to do if she realized she did not like her new job and wanted to come back. Shanley replied that Fleischer would have to reapply.[141] She added that she had not been doing things right before, it was "a redirection too, that I'm learning different things that I should have been looking at before that I haven't, and that I have to relearn myself." Shanley also mentioned that "it's also going to be direction from our district manager as well, how many hours are sustainable and everything."[142]

That evening, the Union posted a statement on its Twitter page asserting that Fleischer "was fired" earlier that day "- - on the same day the story profiling her organizing activities ran in the print Washington Post." The Union questioned "[w]hy are union activists suddenly being told they "don't meet the needs" of the business?" The post also shared a Facebook post from Fleischer stating in pertinent part:

> "Little did I know, yesterday was my last shift at Starbucks," Fleischer said. "I am no longer being scheduled nor am I allowed to pick up any shifts, and as of today I am effectively terminated from the company, at the first unionized corporate location in the nation."[143]

On February 21, Fleischer started her new job. The same day, Newsweek published an article about her, entitled *Starbucks Fires Worker, Union Leader After She Took Second Job.*[144] The article referenced the Washington Post article and the Union's February 20 Twitter post. If employees in the Buffalo area and around the country were not already aware of the company's tussles with Fleischer and the Union, they were on February 24. In a nationwide message on the Partner Hub to all United States employees, Nelson explained, in pertinent part:[145]

> I am reaching out because I have also had many partners ask questions about the union elections in some stores - so I wanted to share what I know, and what I posted on Workplace yesterday for your managers.
>
> First, we had ballot counts in 3 more stores in Buffalo scheduled for yesterday - however we learned the ballots were impounded and won't be counted yet, as the NLRB is reviewing our request to reverse their decision and allow all impacted partners in nearby stores to vote too. Per the NLRB's long-standing legal process, both the employer and the union have the right to request reviews like these. Once the NLRB shares their decision with us, we will proceed with their next steps.
>
> . . . For instance, you have shared that it's helpful when we bring you the facts about things you are seeing in the media. I hear you. I want to take this opportunity to set the record straight on a few things you've asked about:
>
> - Earlier this week, a Buffalo partner claimed she was fired - she was not. She and 12 partners at her store requested a significant reduction in hours, some from 30 to 5 hours a week. When this happens, in any store, we make every effort to make it work. But with so many partners asking all at once, it's made it hard on the manager and the rest of the team, who have a store to run and customers to serve. Our local leaders continue to have conversations with them.
> - The union is saying we should not talk to our own partners—they're calling it "union busting" - which is inaccurate. We owe it to partners to share facts and our perspective - just as we do anytime partners are navigating a big decision - and the NLRB allows for this as part

[137] GC Exh. 143(b) at 2-3, 5.

[138] GC Exh. 144.

[139] After February 20, Brisack offered Fleischer the opportunity to pick up one of her shifts. Shanley, however, denied the requests and told Fleischer if she was able to pick up a shift, then she should increase her availability to include those days. (Tr. 2062-2063).

[140] GC Exh. 145(a)-(b).)

[141] GC Exh. 145(b) at 2-5.

[142] Id at 6-7.

[143] Fleischer conceded on cross-examination that she was not actually terminated from the company as of February 20, hence the term, "effectively terminated." (Tr. 2033, 2050.) In any event, the issue of whether she was constructively terminated on February 20 is addressed in the legal analysis section of this decision.

[144] See https://www.newsweek.com/starbucks-fires-worker-union-leader-1681065

[145] GC Exh. 146.

> of the process. These are elections - and like any election, voters have the right to hear all sides. That is not "union busting." That is open, honest, and direct dialog between partners and their managers - and I am proud we are the kind of company that still wants that. I think its important partners have the option to hear from us before making this big decision.
>
> I'll leave you with this: We are not anti-union; we just don't think we need a union here at Starbucks because we believe in open communication between partners, and we don't think partners should have to pay someone to speak for them. You have my word we will continue to listen, learn, and be open with you. And my ask to you is that you please do your own research and seek the facts too. I'll be in touch as we learn more.

On February 22, Murphy called Fleischer.[146] She asked if Fleischer believed she had been separated from the Respondent. Fleischer responded, "[y]es. As far as I know, that's what happened." Murphy replied that she called to "clarify" that Fleischer had not been separated and was "still very much active in the Starbucks system as of right now." Fleischer asked if that was for three more weeks. Murphy replied, "that is not my understanding," and if there was a way to "meet in the middle" and avoid "separation."[147] Fleischer refused to increase her availability to three days, but offered to increase her hours on Saturdays. Murphy apologized for any miscommunication that occurred. Fleischer replied that, although she knew Shanley was "not terming me out of the system that day," she "really did leave [the February 20] conversation feeling like that was the conversation that we had, was termination." Murphy told Fleischer that she would look into several options, including a leave of absence, and get back to her.[148]

On March 9, Fleischer and Eisen met with Shanley and Murphy.[149] Murphy asked if Fleischer was willing to expand her availability or leave the company in good standing. Fleisher's position remained the same—she was unable to expand her availability. Murphy replied, "[s]o I know Patty's having conversations with a lot of partners right now. So truly it not it is not just you, Cassie." She asked Fleischer if she was willing to accept a transfer because the Friday night and Saturday morning slots had already been filled.[150] Shanley noted that she had spoken with other employees—Eisen, Fleischer, Higgins, Huetmaker, Brisack and others—regarding their requests to limit availability "so they can stay on."[151] Murphy stressed that Fleischer was not yet separated from the company. She also provided a new twist to the availability policy:

> I do want to clarify, though, here's - - because I've - - I've heard a lot of this most recently, which is, there is no minimum threshold of, you have to work X number of hours a week. So I want to be really clear on that. It truly is a mixture of a lot of different things. It is balancing other partner's availabilities, and it's creating enough flexibility for the system to generate a schedule.[152]

Fleischer and Murphy spoke again on March 12.[153] Murphy let Fleischer know that Friday evenings were already covered by existing staff, but there was a need for coverage on Saturdays and Sundays at the Elmwood store. If she was not interested in that option, Murphy said Fridays-Saturdays might fit the needs of other stores, and asked Fleischer to suggest three or four she might be willing to transfer to. They agreed to speak again two days later.[154]

On March 14, Fleischer told Murphy that a Saturday-Sunday schedule would not work for her because it would leave her with no days off during the week.[155] Nor was she interested in transferring to another store. Murphy urged Fleischer to reconsider increasing her availability to Fridays, Saturdays, and Sundays, but she refused. Fleischer asked why she could not be scheduled on Saturdays only, but Murphy insisted she needed more availability. Murphy asked how long Fleischer needed in order to make a final decision. Fleischer replied that she would need one to three months. They agreed to speak again on March 18.[156]

On March 18, Fleischer told Murphy that she would not change her availability from Fridays and Saturdays or consider a transfer. Murphy replied that she would discuss it again with Shanley and get back to Fleischer.[157]

In a telephone call on April 21, Shanley and Murphy issued Fleischer a notice of separation.[158] It stated, in pertinent part:

> As stated in the Partner Resource Manual, "If a partner's availability changes, the partner should submit a new availability request in the Starbucks Partner Hours system. The store manager will review the information for scheduling consideration. There is no guarantee that a request for a schedule change will be approved."

[146] GC Exh. 147(a)-(b).

[147] GC Exh. 147(b) at 2-4.

[148] Murphy's explanation was not credible. She testified that the company tries to avoid "clopen" scheduling, where an employee works the closing shift and then opens the next morning. However, Murphy never mentioned that consideration during her recorded conversation with Fleisher. Instead, like Shanley, she gave Fleischer vague explanations about scheduling multiple employees who had also requested reduced availability. (Id. at 5-13; Tr. 2735-2737.)

[149] GC Exh. 34(a)-(b).

[150] GC Exh. 34(b) at 3-6.

[151] Id. at 7-8.

[152] Id. at 15-18.

[153] GC Exh. 148(a)-(b).

[154] GC Exh. 148(b) at 2-4.

[155] GC Exh. 149(a)-(b).

[156] GC Exh. 149(b) at 2-10.

[157] GC Exh. 150(a)-(b).

[158] GC Exh. 116.

> Cassie was given multiple opportunities to change her availability or transfer to a store that could meet her available hours. She was also given a substantial amount of time to consider these options. On 3/18/22, Cassie shared with her district manager that she had no intention of changing her availability or transferring stores.
>
> As stated in the Partner Resource Manual, "A partner will be expected to make themselves available for work for a minimum number of days or hours each week. Availability that doesn't meet business needs may result in a determination by the manager that the partner be separated from employment."
>
> Given Cassie's substantial reduction in her availability (which fails to meet the business needs of her store), and her refusal to increase her hours or transfer stores, effective immediately, Cassie's employment at Starbucks is separated.[159]

Although the Union was certified as the Elmwood store's exclusive bargaining agent at the time, the Respondent did not notify the Union of the change to its availability policy that ultimately resulted in Fleischer's resignation on February 20

10. Mikaela Jazlyn Brisack

a. Availability Request Denied

Brisack, a signatory to the Dear Kevin letter and member of the Elmwood store bargaining committee, has worked at that store since December 2020. She had had no restrictions on her availability when she started, but changed it within a month to morning shifts only.

In early February, Shanley asked Brisack if it she would agree to give some of her shifts to newer employees. Brisack agreed. Brisack also took that opportunity to reduce her availability to three days a week. Shanley approved that change, but told Brisack that she would not approve anything less than that. Brisack continued speaking to Shanley, as well as Shanley's replacement, Merely Alameda-Roldan, about reducing her availability until she actually submitted a request sometime in April, at the earliest. In that request, Brisack reduced her availability to one day—Sunday mornings —but that request was denied.[160]

b. Leave Request Denied

Prior to August 23, Brisack's leave requests were always approved, with the exception of a May 21 request.[161] In October, Shanley approved Brisack's 15-day holiday leave request from December 19 to January 3.[162] On February 16, however, Shanley denied Brisack's 15-day leave request, which stated, "Wedding out of town," from May 14 to 28. Brisack resubmitted that request on February 22, stating, "Attending wedding out of state." On February 26, Shanley denied the request as well, listing the reason: "Jaz you'll need to put in a LOA request.[163] On March 14, Brisack resubmitted the request, stating, "Family commitment out of state." On March 15, Shanley denied the request with the following comment: "Jazzy, as stated before you need to contact Sedgwick and request an LOA for that amount of time off. Please let me know if you need assistance." Brisack subsequently put in a leave of absence request for May 14 to 18 and that was granted.[164]

The Respondent did not notify the Union or seek to bargain over the change to its availability policy before forcing Brisack to take a leave of absence in May.

11. Kellen Higgins

Kellen Higgins worked for Respondent as a barista from November 2018 to April 16. Higgins initially worked at the Transit Commons store. On February 1, 2021, Higgins transferred to the Elmwood store. Higgins was active in the union campaign, began wearing a Union pin at work in November, and spoke with the media regarding his support for the Union. That same day, Shanley asked Higgins whether the pin meant he supported the Union. In January, Higgins also participated in a four-day strike at the Elmwood store.

During his employment with the Respondent, Higgins attended college and then graduate school. As an undergraduate, he worked full-time in between semesters and two days during semesters—Thursday and Saturday. During his first semester of graduate school in Fall 2021, Higgins requested reduced availability to one day per week—Saturday from 6:30 a.m. to 2:00 p.m. Shanley approved his request. On December 17, Higgins submitted his availability for full-time hours during the winter break. Again, Shanley approved his request.[165]

Higgins revised his availability back to two days per week after the winter break. On January 25, Higgins text messaged

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[159] GC Exh. 151.

[160] Brisack's testimony did not establish that she actually made any requests to either Shanley or Alameda-Roman prior to submitting a formal request in or after April to reduce her availability. The substance of those discussions—whether they involved requests or just running her preferences by them—was not evident from Brisack's testimony ("I started talking to Patty in February and had continued to talk to them about it because their continuing to not allow me to have the availability that I need.") (Tr. 1566-1567.)

[161] Brisack's leave record showed that the May 21, 2021 request to take leave on June 11, 2021, was denied five days after she submitted a request to take leave on June 29, 2021 The latter request was approved. (GC Exh. 41.)

[162] Brisack did not have any leave accrued at the time that request was approved. (Tr. 1604-1605.)

[163] In contrast with a vacation leave request, a leave of absence removes an employee from the Respondent's system. The employee must go through a third party, Sedgwick, to get a leave of absence approved. When they return, the employee has to follow a process to be reinstated in the scheduling system. By contrast, a vacation leave request is simply approved by the store manager and the employee does not have to do anything upon return to get back onto the schedule. (Tr. 1576-1577, 1603-1605.)

[164] The Respondent contends that Shanley was following protocol by requiring Brisack to take a leave of absence because she did not have available paid time off when submitted the February requests. However, there is no indication in the record that Brisack had sufficient paid time off when she was previously granted leave for similar periods of time—e.g., December 19 to January 3. (Tr. 1568-1567, 1603-1605.)

[165] GC Exh. 45.

Shanley and asked her to cancel that request and accept a new one with availability only on Saturdays. He explained he had just turned in his schedule for the spring semester, which included a class on Thursdays. Not having received a reply, Higgins messaged her again about the schedule on February 5. On February 7, Shanley replied and asked Higgins to call her to set up a time to meet about the schedule.

Shanley met with him in the store. Higgins asked if he was being terminated. Shanley replied that, although he was not terminated, there was an issue with his availability. She explained that the store needed him to increase his availability to an additional day, as well as 20 hours per week because the store was in its "off-season" and the company was "cutting" hours. Shanley said that she was unwilling to take away hours from someone like Angela Dudzik, who was available 30-32 hours per week, and give them to an employee who was available for just one shift per week. Higgins replied that he was never previously required to work 20 hours per week. If that was the case, he suggested the hours be "cut" from every employee equally in order to accommodate his availability. Shanley rejected that idea and told Higgins he had several options—increase his availability, take a leave of absence, or resign. If he opted to resign, Shanley said he would be rehireable. He told Shanley there was no chance he could work that many hours with his school schedule. Shanley replied that she knew he could not. Thereafter, Higgins was no longer regularly scheduled for any shifts. Shanley did, however, offer Higgins, and he accepted, several Saturday shifts in February and March.

Shanley met with Higgins again on a Sunday in early March. She reiterated the Respondent's availability requirements from their first meeting, including the reference to Dudzik's hours, and the three options. Higgins then mentioned Eisen's request for a limited availability schedule. Shanley replied that Eisen's schedule was based on a "historical agreement" and Higgins' request was unrelated to that arrangement. Shanley again urged Higgins to add Thursdays and it "could be sporadic," while Higgins considered his options. Higgins agreed.

After that meeting, Shanley went on vacation. She returned in mid-March and called Higgins. Shanley pressed him for one more day of availability. Higgins offered more availability on Thursday and Friday, "but it could not be every Friday," and Shanley put him on the schedule.

On April 2, 2022, Higgins, having concluded that he could not satisfy the Respondent's 20-hour weekly minimum availability, met with Shanley and delivered his two-week notice, effective April 16, 2022. Shanley wished Higgins well, told him he was eligible for rehire, and told him that she was leaving the company in May.[166]

As with Brisack and Fleischer, the Respondent neither notified the Union nor gave it an opportunity to bargain over the February change to its availability policy that caused Higgins to resign.

[166] These findings are based on Higgins credible and undisputed testimony. (Tr. 632-656, 668-681, 685-687; GC Exh. 46.)

E. Genesee Street

1. Union Activity

The Union's August 23 campaign announcement, which several Genesee Street store employees signed onto, triggered an unusual visit to that store the next day by then-district manager David LeFrois. LeFrois, who usually came to the Genesee Street store two or three times per year to meet with the store manager, never spoke to other employees during those visits. On this occasion, he asked employees if they had any concerns, suggestions to improve work conditions, or needed support. Shift supervisor Danka Dragic, a member of the organizing committee, complained to LeFrois about understaffing.[167]

On August 30, Genesee Street store employees filed a petition in Case 3-RC-282139 to represent the store's full-time and regular part-time baristas, shift supervisors, and assistant store managers.

2. Changes to Store Operations

Corporate staff and numerous support managers followed LeFrois' August 24 visit to the Genesee Street store, inspected the store and solicited employee concerns. With them also came numerous changes to Genesee Street store operations. These included shorter store hours, the elimination of longstanding employee practices, stricter enforcement of company policies, and the remedial efforts to address employee complaints.

a. Store Hours and Scheduling

Prior to August 23, the Genesee Street store usually opened at 5 a.m. on weekdays and 6 a.m. on weekends, and closed at 9 p.m. Operational hours at the Genesee Street store were reduced in September due to call-offs and staffing shortages. The store opened at 6:30 or 7 a.m. and closed at 5 or 6 p.m. After several months, the opening time returned to the pre-August 23 schedule, but closing time was 8 p.m., except for Sundays, which was 7 p.m.[168]

At some point in October, Rizzo approached Williams and spoke with her about scheduling and store hours. Rizzo complained that work schedules were not being posted in the store. Regarding store hours, Rizzo explained that many of her coworkers were unable to work because the store now closed at 5 p.m. and they were available only between 4:30 p.m. and 9:30 p.m. As soon as the next schedule was ready, it was posted in the back room.[169]

[167] Based on the credible testimony of Rizzo and Dragic, I also find that LeFrois never met with baristas or shift supervisors during his visits to meet with the manager. Moreover, in the absence of an explanation by the Respondent for his atypical visit to Genesee Street on August 24, I find that he went there in response to the Dear Kevin letter. (Tr. 691-693, 747-748, 2150-2151.)

[168] The explanations for the revised store hours by support manager Louis DeFeo and Mkrtumyan was not disputed. (Tr. 707-708, 836, 2987-2989, 3405-3407, 3425-3426.)

[169] Although she initially testified that she interacted with Williams after the election, Rizzo subsequently placed it before the November 6 Schultz speech. Nevertheless, I credit her testimony regarding the interaction and the posting of paper schedules the following day. (Tr.

b. Staffing Increase

The Genesee Street store employees was often understaffed when corporate officials visited, and employees expressed those concerns. In addition, after the Union campaign began, the store began to experience 8 to 14 scheduled employees calling off each day—the most call-offs in any of the Respondent's stores. Other Buffalo stores also experienced similar staffing issues from increased call-offs after the campaign started.[170] The Genesee Street store, however, received special attention.

In September and October, the Respondent temporarily transferred employees from the NFB store while it underwent repairs and renovation,[171] and the Walden & Anderson store, which was being used as a training center. The addition of as many as 15-18 employees on the floor at one time, however, created operational issues and there was not enough work to assign to all of them. There was also friction between the mostly prounion Genesee Street employees and mostly disinterested or anti-union NFB employees.

Prior to September, shift supervisors would have been able to between send some employees home if they were not needed. However, when Rizzo tried to send employees for that reason, she was instructed to keep them on the clock and find something for them to do. As a result, NFB store employees were able to accrue enough hours to vote in the Genesee Street election. Although employees from Walden & Anderson store—who were much more prounion—were also assigned to Genesee Street, only NFB employees accrued enough hours there to be added to the Genesee Street voter list and participate in that store's election.

Although there were at least 10 other stores closer to the NFB store than the Genesee Street store, including several stores whose employees also complained about understaffing, six NFB store employees were added by the Respondent to the Genesee Street store voter list and cast ballots in the December 9 representation election.[172]

c. Renovations

In mid-October 2021, the Respondent closed the Genesee Street store for remodeling. The bar space was expanded, new sinks were installed, and the store was repainted.

3. Support Managers

a. Policies Enforced

Prior to August 23, Chris Wright, the Genesee Street store manager regularly enforced the time and attendance policies but not the dress code. That changed when Louis DeFeo, the store's first support manager, arrived in September. DeFeo told Rizzo that she needed to replace her jeans because they had small rips at the knees. He warned Rizzo that she would be written up if she wore ripped jeans again.[173]

b. Meal Benefit

The Partner Guide instructs employees on the manner in which they can use their free food and beverage benefit: Partners are required to wait in line with other customers to receive their partner food items or beverages, and another partner should ring out each partner's items(s).[174] Prior to the Union campaign, however, employees at the Genesee Street store typically bypassed the customer line during breaks, got their own drinks or food, or had a coworker get it for them. They would then ring themselves out or have a coworker do it. At some undetermined point after the campaign launched, DeFeo enforced the meal policy by instructing Genesee Street employees to wait on the customer line for purchases.[175]

c. Employee Communications

Consistent with the 'Starbucks experience" that Williams reaffirmed in listening sessions, Genesee Street employees customarily engaged in conversation with customers about various nonwork-related subjects. On several occasions, however, support managers restricted employee interaction with Genesee Street customers. In mid-October, Transit & Regal employee Brian Murray went to Genesee Street on his day off to buy a cup of coffee. He began to speak with Rizzo, who was working in the bar area at the time, when Ashley Justus, a support manager, interrupted them and told Rizzo to get back to work. Justus said it was inappropriate for Rizzo to take herself and coworkers out of their positions to have these conversations about the Union. Rizzo replied that she was simply interacting with a customer, since Murray was off the clock.[176]

Justus did it again in November when Murray visited the store, spoke briefly with Dragic, and handed her Union newsletters to distribute. Justus interrupted Dragic, pulled her off the floor, and told her she was spending too much time talking

735-738.) DeFeo, responding to leading questions, testified that he posted the schedules after his arrival at the Genesee Street store, but otherwise corroborated Rizzo's testimony that paper schedules had not been posted at the store. (Tr. 2996-2997.)

[170] Testimony by Murphy, Pusatier, Filc, and Mkrtumyan regarding the high number of call-offs at Genesee Street was not disputed. (Tr. 2724, 2844, 2921, 3404-07, 3477).

[171] The Respondent's Buffalo-area store map shows that there are at least 10 stores closer to the NFB store than the Genesee Street store to its southeast. (R. Exh. 96.)

[172] The Respondent's witnesses denied that it deliberately overstaffed any stores or that the NFB store transfers were motivated by a desire to pack the Genesee Street store unit. (Tr. 2726, 2989-2990, 3406-3407, 3440-3441.). They did not, however, refute the credible testimony of Rizzo and Dragic regarding the chaos that resulted from the temporary transfers. Nor did they credibly explain why shift supervisors were not permitted to send unneeded employees home or their rationale for placing NFB employees at Genesee Street instead of one of the 10 stores that were closer. (Tr. 720-722, 2162.)

[173] I based this finding on Rizzo's credible and undisputed testimony. (Tr. 741.)

[174] GC Exh. 140 at 156.

[175] It is not disputed that company policy requires employees to stand in line to get beverages and not process the transaction themselves, even when working. (Tr, 3411-3413.) Rizzo, however, credibly explained that the policy was not previously followed because strictly adhering to it would leave employees with little or no time on their breaks if they had to wait on the customer line. (Tr. 740-741.)

[176] Rizzo did not specify whether Justus commented on the substance of the conversation. ((Tr. 733-734.)

to her friend. Dragic, who had previously been handed pens, letter, and magazines across the counter by customers—without rebuke—said that Murray could have been a customer who was about to place an order. She then asked if Justus admonished her because it was about the Union. Justus said, "no, it's fine. I know you guys have your thing, but you can't be having conversations when we have things to do."[177]

In December, Rizzo and another employee were working at the front register when a customer engaged them in conversation about the Union. Joanna Hernandez, another support manager, walked behind her and asked both of them if there was anything better that they could be doing in that moment. After finishing her conversation with the customer, Rizzo responded to Hernandez that she was connecting with a customer like employees are supposed to do.[178]

Consistent with other warnings for profanity by support managers at other stores, Joanna Hernandez, a support manager, told employees not to use foul or disrespectful language. Prior to August 23, cursing at Genesee Street was a common occurrence. Wright would also spew vulgarities, although he did on one occasion ask store employees to be more professional in communicating with each other.[179]

d. Headsets

At Genesee Street, Chris Wright, the store manager, wore a headset only when working on the floor or drive-through. All of the baristas and shift supervisors, however, wore them all of the time for work-related communications and nonwork-related conversations. Shortly after the commencement of the Union campaign, Wright left the company. After arriving in September, however, the support manager imposed a rule that headsets could only be used by the three employees working at the following stations: drive-through orders; drive-through bar; and warming. While limiting employee use of headsets, the support managers wore them at all times while in the store, even when off the floor. By doing so, they were able to monitor operations and employee chatter. As a result, Rizzo and Danka Dragic were reprimanded by support managers for swearing while using headsets. In both instances, the support manager were off the floor and without headsets, would not have heard them.[180]

e. Other Changes

The support managers also performed a variety of functions at Genesee Street. DeFeo, Justus, and Mendoza, in particular, disrupted plays called by supervisors, rearranged the lobby, dusted, asked where they could be of assistance, performed store manager-related administrative tasks, and had shift supervisors pull employees from the floor in order to engage in one-on-conversations with baristas.

At Genesee Street, opening shift supervisors were responsible for placing supply orders. At some point, DeFeo also told Rizzo to stop ordering supplies until she was retrained to do it the proper way. Rizzo was retrained by support managers DeFeo, Justus, and Lion Mendoza, and was able to resume ordering supplies.[181]

4. The Listening Sessions

a. The September 9 Meeting

On September 9 and 10, Williams, Peck, and Pusatier held their first listening sessions for Genesee Street employees at a Marriott hotel near their store. The store closed early on each day so employees could attend. Chris Wright, the manager, placed employees on the schedule for one of the two meetings and told them to attend at a certain time. About 10-12 Genesee Street employees attended each one.

The September 9 meeting was similar to the initial district-wide meetings where the Williams Team solicited complaints and provided their initial assessments of the problems and the steps being taken to address them. Peck assured the employees that they were in a "safe place" and were free to shares their concerns without fear of reprisal, including any about their store manager. The employees shared specific issues they were facing, which the Williams Team promised to address them. Regarding employees' concerns about inadequately trained staff, Williams explained that the Respondent was addressing that issue by converting the Walden and Anderson store into a training facility.

At a certain point in the meeting, Peck addressed the Genesee Street store employees' representation petition. She stressed the oft repeated point that the Respondent's greatness as a company emanated from the partner-to-partner relationship that it has with its employees. If the employee brought in the Union, she said, that relationship would not be preserved.[182]

b. The September 10 Meeting

Genesee Street closed early for an evening September 10 meeting at a hotel behind the store. The meeting lasted a little over an hour. About 10-12 employees attended, all from Genesee Street. Caroline Larczak, a member of the organizing committee, recorded the meeting.[183]

The meeting was similar to the initial sessions when Williams and others continued to solicit complaints and explained

[177] The testimony of Rizzo and Murray differed as to whether Justus interrupted her conversation with Murray or spoke to her after he left. Regardless, the credible and corroborative testimony of Murray and Dragic established Justus's practice of nipping union-related conversations in the bud, and then pulling the employee aside for counseling. (Tr. 733-734, 756, 1234-1236, 2160-2161.)

[178] Hernandez was promoted a few months earlier to district manager in another state. (Tr. 26; Tr. 732-733.)

[179] This practice was undisputed. (Tr. 2155.)

[180] I based these findings on the credible testimony of Alexis Rizzo, Dragic, and Caroline Lerczak over DeFeo's vague testimony that he and other support managers only used headsets when they were "part of the play" or "to support store operations." (Tr. 726-730, 789-790, 2154-2154-2155, 2987).

[181] DeFeo did not dispute the credible descriptions of Rizzo and Dragic regarding the roles performed by the support managers. (Tr. 725-726, 2156.) On the other hand, his testimony regarding Rizzo's retraining on how to order supplies was also undisputed. (Tr. 300-3002.)

[182] These findings are also based on Rizzo's credible and undisputed testimony. (Tr. 700-705.)

[183] GC Exh. 51(a)-(b).

the steps they were already taking to address some of them, including chronic understaffing.[184] Referring to them as "gaps in the market," Williams reported that "there's just so much going on here that getting to the bottom of it is what we do to fix things and doing – addressing the concerns you raised." Pusatier summarized some of those efforts: understaffing was being addressed by the addition of recruiters and closing stores early and a team was "looking at every single store's stock top to bottom to make sure that we're not missing anything and that we're – all of your equipment works, that your stores look beautiful the way that you deserve."[185]

Addressing the Union, Peck acknowledged that the store's employees had the right to seek representation in the workplace and urged them to ask questions of the Respondent and the Union. Once again, however, she shared the Respondent's aversion towards having the Union involved:

> You know - - the connection and relationship that Starbucks has, and we have, with our partners, partner to partner, is really important to who we are. And it troubles us to think of anything coming in the middle of that. So having any kind of representation for other partners, something that - - that worries - - that worries me. I want to make sure that every partner has a relationship with us directly. That is at the core of who we are.[186]

Williams followed up by stressing that any employees could contact her directly if they did not feel comfortable sharing complaints with the store manager, district manager, or regional vice president. She assured them of her commitment to ensure that all of their problems were appropriately addressed:

> So we're not - - we're not taking all these things as complaints. We're taking all these things as evidence that somehow, the support structure, the leadership, the communication - - I don't know what happened, but we're not going tolerate it. And we're going to make sure you guys get what you need to have great jobs. I mean, that's - - that's what - - that's the only thing we do. So I'm happy to take all the examples . . . And - - and we've got the full team that's investigating every single one, and we will get back to you. . . . I promise you.[187]

Employee feedback focused mainly on the lack of training provided for the various store functions. As the meeting wrapped up, Peck asked again if there were any "questions regarding the vote that you'll be taking on the unionization for your store?" There were no questions.[188]

[184] It is undisputed that the Genesee Street store experienced a high number of call-offs in September and October 2021—about 8 to 14 per day. (Tr. 2979-2981, 2987-2988, 3405-3406.)

[185] GC Exh. 51(b) at 11, 18-20.

[186] Id. at 21-22.

[187] Id. at 28-29.

[188] Id. at 46-47.

c. The September 16 Meetings

On September 16, Williams, Peck, and Pusatier held a second set of listening sessions for Genesee Street employees at a nearby hotel. Again, Wright placed the meetings on employees' schedules and told them to attend one.[189]

Approximately 10 to 12 employees attended the afternoon session. The Williams team's presentation began with a recitation of the issues raised by employees at the previous week's meetings and the steps being taken to address them. After they reported that the complaints of understaffing had been addressed, Rizzo commented that the company's response had been counterproductive. She explained that the addition of too many new employees and support managers resulted in overstaffing and operational problems on the floor.

During the meeting, Peck stressed that employees should feel safe to work there and share any concerns they had, including any about the store manager. During a side conversation after the meeting ended, Rizzo observed Williams speaking with Madison Baer, a barista. Baer was sharing a stressful incident involving Wright. Williams replied that his behavior concerned her and was not acceptable. She assured Baer that she would investigate and make it right.[190]

Larczak recorded the evening meeting.[191] Peck opened by updating the employees on the work being done to address their concerns:

> One is to really keep you updated on how things are going with all of the operational improvements and changes that we're making to really bring your experience up to what every partner in every Starbucks store around the world should expect. So a ton of work is happening, as we outlined last week.

The Williams team announced efforts to address employees' complaints relating to understaffing, broken equipment, dirty stores, and fruit flies. With respect to callouts leaving the store short-staffed, Williams instructed the employees to call Edwards, who would call Mkrtumyan if needed: "And there's no standard that you're just gonna go with one person short; that's not a standard."[192] When the subject turned to the election, employee Matt Jackson's asked "why you guys don't want to see us unionize?" Pusatier reiterated the company's consistent catchphrase:

> Really because at the core of who we are as Starbucks partners, our entire relationship as - - as a partner is partner to partner. Everything we do is about our direct interaction, whether it's about, you know, solving problems, or getting to

[189] Although they attended different sessions that day, Lerczak corroborated Rizzo's testimony that Wright told employees to pick one of the sessions because they were expected to attend. (Tr. 703-704, 843-844.)

[190] I based this finding on Rizzo's credible and undisputed testimony. (Tr. 703-706.)

[191] GC Exh. 52 (a)-(b).

[192] Id. at 7-8.

> know each other, caring for each other, supporting our store partners and our customers. Everything is partner to partner. It's who we are at our very, very core, and I totally get the challenge that you're - - that you're facing here, because you haven't felt that.[193]

Williams concurred with Peck's point that employees did not need a union to represent them "because you represent you." She went further:

> When somebody else represents you, it's a union representing you, and there's all sorts of things that will change in how you're employed with us, and you will be - - you'll have a contract that's different than stores that are not. And we can through all the details of what would be different for you and your job, or you and your benefits, or you and your pay, which would be different or not.[194]

Lerczak commented that the presence of high level company officials was intimidating to the employees. She then asked Williams why they were focusing so much attention on the three stores that filed petitions. Williams explained that her team would continue to shower attention on all 20 stores in the market and respond to each depending on its particular needs: "generally speaking, every store is getting treated the same way."[195] Pusatier then addressed other questions that had been raised:

> Someone asked about could you transfer out of store if it became unionized and you weren't interested? Yes, you could. The challenge with - - especially with borrowed partners, if you were to work in different stores, you can't go from - - if you're, you know, picking up shifts from a non-unionized to a unionized store, or vice versa, because the unionized partners are under a contract, and it's typically a three-year contract with whatever union it is, of Workers United, in our case. And so you aren't able to pick up shifts.[196]

Addressing a question previously raised, Pusatier asserted that employees would be unable to opt out of union membership if a majority in the store voted to bring in the Union. It would be different, she said, if the whole district voted to unionize. When Lerczak interjected that an open or closed shop form of bargaining unit would be negotiable, Williams rejected that possibility. She urged employees to research Workers United on the internet where they would find that

> every one of their shops, 90 - - if not everyone, 99.9 - - 99 percent of them are if you - - if you work in this store that's a union store that is under contract, that contract is for those partners that work in that store. And those partners cannot go to work in a nonunion shop, and nonunion people cannot come over and work in a union shop.[197]

Turning to other employees' terms and condition of employment, Peck stated that pay increases and other benefits would have to be negotiated if the union prevailed. She explained that "you know what you get with Starbucks, you have that now. . . . that's a given." With the Union, Peck stated that all they were guaranteed of were dues; wages and benefits would be negotiable. Moreover, any companywide wage or benefit increases would "not get rolled into the contract.[198]

Following up on Peck's assertion regarding the uncertainties of being bound to a collective-bargaining agreement for a number of years, Pusatier hammered away at the negative consequences:

> Pusatier: Allyson, if I may jump in there, that - - that was a big learning for me over the last several days, because I just kept thinking about everything, you know, over the last 18 months, right? Like, we need - - we never expected this to happen, and I just think about, like, oh gosh, if something un - - unforeseen happens and Starbucks decides to do, you know, extra benefits to take care of - - of all of our partners, would - - would that or would that not be included in the contract, if we didn't know it was coming, right? So those type of things.
>
> Williams: Like (indiscernible) pay - -
>
> Unidentified Speaker 5: Yeah.
>
> Williams: - - or service pay, those would be things that if they weren't in the contract, we wouldn't offer those. I mean, it's just - - it's just not part of the contract with the union. So you'd have to wait until the contract's over to nego - - re - - re-negotiate those benefits. So - - and it's - - it's either more benefits, or less. It could be better, it could be worse, but those are all unknowns.[199]

As the Williams Team continued to reinforce the notion that any employee could contact them directly, Lerczak recounted the time she was reprimanded by store manager Chris Wright for calling the district manager in his absence. Williams replied that was unacceptable and promised to investigate. Referring to that and other stories of harassment by vendors and customers, Williams said, "I can't do anything because they happened, but I can do something about them right now." Lerczak remained after the meeting to provide further details about Wright's lack of support. Williams replied that Wright was "gonna take some time off."[200] Wright did, in fact, take time off

[193] Id. at 15-16.
[194] Id. at 16-17.
[195] Id. at 18-23.
[196] Id. at 23-24.
[197] Id. at 24-25.
[198] Id. at 26-27.
[199] Id. at 27-28.
[200] Id. at 42-45, 71-78.

and subsequently resigned in November.[201]

d. The October 24 Meeting

On October 24, just days before ballots were to be mailed to employees, Peck, Filc, and DeFeo met with the Genesee Street store's employees. The store's employees were scheduled to attend by Ashley Edwards, a support manager. Between 20 and 30 employees attended. As the regular store closing time had changed to 6:00 p.m., the store was already closed when the meeting was held there at 7:00 or 8:00 p.m.

The meeting began with an explanation of the voting process for the union election. Peck told the employees that, in her opinion, it was very important that they vote "no." She asserted that the Respondent needed to preserve the "partner-to-partner" connection, did not need an outside party to change anything or get in the way, and would take care of its employees on its own. Rizzo interrupted Peck and asked her coworkers to talk about the issues that they have endured since the organizing campaign began. After employees vented about store issues for about one hour, Peck returned to the slideshow presentation of the voting process. She displayed a large sample ballot marked "no" in the box and reiterated the importance of voting "no" in order to preserve the partner-to-partner relationship. She warned that a "yes" vote would result in uncertainty regarding employee benefits – employees could lose them or they could stay the same.[202]

5. The December 9 Election

The Genesee Street store ballots were tallied on December 9. Thirty-one votes were cast based on a corrected eligibility date of October 24. Fifteen votes favored the Union and 9 votes opposed the Union. In addition, 7 votes were challenged—one by the Respondent and six by the Union. On December 16, the Union filed 13 objections to the election.

Immediately after the vote was announced, Rizzo called the store to inform her coworkers. However, she was redirected to a central telephone line, the first time that had occurred in Rizzo's seven years with the company. This went on for about one month.[203]

In a supplemental decision, dated January 10, the acting regional director, Nancy Wilson, sustained all seven challenges, revised the tally to eliminate the challenges, and overruled the Union's objections as moot. The Respondent's one challenge was sustained on the ground that the employee was no longer employed as of the voting eligibility date. The Union's challenges pertaining to six NFB store employees were sustained on the grounds that (1) they were temporarily assigned to the Genesee Street store while their store underwent renovations, and (2) none were scheduled to work there after October 13.[204]

Accordingly, the acting regional director certified the Union as the exclusive bargaining representative of the employees in the following appropriate unit:

> All full-time and part-time Baristas and Shift Supervisors employed by the Employer at its 4255 Genesee Street, Cheektowaga, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

6. Alexis Rizzo

Rizzo was a signatory to the Dear Kevin letter and founding member of the Union organizing committee. She openly supported the Union at work and wore a prounion pin on her apron. Between 2017 and August 2021, Rizzo was disciplined five times for time and attendance violations. Two of the five were documented coachings; three were written warnings—2017, May 22, 2021and August 16, 2021.[205]

On September 11, Rizzo overslept and arrived to work 2.5 hours late. On September 14, Wright reported the tardiness to Christopher Fugarino, a partner resources manager. Since Rizzo received a previous written warning within the previous six months, Wright recommended Rizzo be issued a final written warning. He also mentioned that his recommendation was based on his consistent practice of documenting attendance violations and had nothing to do with Rizzo's involvement in the organizing campaign. Fugarino's notes for September 21 stated that a written warning would be issued to Rizzo by Mkrtumyan, as Wright was on vacation. Fugarino's note also stated that a written warning, not a final written warning, was being issued because other shift supervisors "had their FWWs reduced to WWs and we want to ensure there is consistency person-to-person."

On September 24, Mkrtumyan and Cioffi pulled Rizzo off the floor for a meeting in the back room. Mkrtumyan then informed Rizzo she was being issuing a written warning for tardiness on September 11. She also informed Rizzo that she was not issued a final written warning because the incident

[201] Although Mkrtumyan testified that Wright resigned in November (Tr. 3460.), it is evident from Rizzo's credible testimony that he never returned to the store: "At the time our store manager, Chris Wright, was no longer with the company." (Tr. 707.) Given the timing and absent information indicating otherwise, I conclude that Wright was removed as the store manager as a result of the complaint reported to Williams on September 16.

[202] These findings are based on Rizzo's credible rendition of the meeting. (Tr. 707-714.)

[203] Rizzo credibly testified that the store's telephone line was disconnected on December for about one month. She also asserted that the inability to call the store had safety and disciplinary ramifications because she would arrive to open the store at 4:30 a.m. and it was the only way for other employees to properly contact her to let he know if they could not make it on time or at all. (Tr. 714-718.) Pusatier testified that the store was receiving a lot of calls supporting the Union, as well as harassing calls, but I do not credit her tentative estimate that the phone was only disconnected for several days. Her testimony also suggests that the calls had been coming in before December 9. (Tr. 2853-2855.) Mann testified about a similar incident at Transit & French in December when she answered the store phone, received a death threat, and rerouted calls for several days. (Tr. 2623-2625.)

[204] The Union's Objection 11, also denied as moot, alleged that these employees were improperly placed at Genesee Street store in order to dilute the voting unit.

[205] Rizzo recalled that she had been issued documented coachings in the past "for some silly things, but when asked if any were written warnings, she testified: "Not that I know of." (Tr. 740; R. Exh. 184-188.)

occurred under the previous district manager.[206]

7. Danka Dragic

Danka Dragic has worked as a shift supervisor at the Genesee Street store for about two years. She was also a signatory to the Dear Kevin letter and a founding member of the organizing committee. She solicited support for the Union at work, wore union pin, and answered questions from coworkers. Dragic also spoke up during one of the meetings on either September 9 or 10 at which Williams, Peck, and Pusatier were present, stating that she was a member of the organizing committee and if coworkers had questions about the Union, they could come talk to her.

Prior to the union organizing campaign, there were occasions when Dragic made her manager aware that she was not feeling well. In none of those instances, however, did they require her to leave work. After the campaign began, however that changed. Dragic caught bronchitis during the summer of 2021, which led to a residual cough that lasted a few months. On one occasion in early October, Mendoza heard Dragic coughing. He insisted on going through the Respondent's COVID coach protocol with Dragic, even though she explained that her cough related to bronchitis. After completing that process, Mendoza placed Dragic on a 10-day isolation and required her to leave work early that day. During the 10-day period, Dragic became ill with COVID-19. As a result, she was out of work until early November.[207]

Prior to being sent home to isolate. Dragic regularly worked eight-hour shifts. When she returned to work in November, her scheduled had been reduced to five-hour shifts. Dragic asked DeFeo three times over a two-week span why she was no longer being scheduled for eight-hour shifts. He first told her that he would find out. During the second conversation, Dragic complained that, although she worked five days a week, she was getting less than 30 hours. Mendoza told Dragic there was no reason why she could not be scheduled for eight-hour shifts. After the next schedule came out, Dragic informed Mendoza that she was still scheduled for five-hour shifts. DeFeo told her there was no reason she should not be scheduled for more hours, but subsequent schedules maintained the decreased hours.[208]

8. Caroline Lerczak

Lerczak, a shift supervisor, worked at the Genesee Street store from April 2018 to March. During that period, she also attended college classes. While in school, Lerczak worked between 25 and 30 hours a week. In between school semesters, Lerczak typically worked approximately 30 hours per week..

Lerczak was a signatory to the Dear Kevin letter and a member of the organizing committee, While at the store, she wore a prounion pin on her apron, solicited support for the Union, and answered questions coworkers had about the Union. Lerczak also stated during the September 10 listening session that she was a contact person for, and welcomed questions about, the Union. Finally, Lerczak testified on behalf of the Union before and during the September representation proceeding and gave media interviews about the union organizing campaign to local, national, and international television stations.

On October 12, Lerczak worked a shift that began at 4:30 a.m. She took a 10-minute break at the midpoint of her shift. Lerczak took a croissant and told Mendoza she would pay for it when the line died down because she felt dizzy and needed to eat something. She went to the back room and sat down to eat. A short while later, Mendoza approached Lerczak with the COVID coach in hand and told her that, based on her symptoms, she needed to go home. Lerczak asked if he was serious. Mendoza read off the symptoms that he entered into the COVID Coach—fatigue, dizziness, and runny nose. Lerczak went home as instructed and isolated for 10 days. On October 19, Lerczak tested positive for COVID. As a result, her paid isolation period was extended further. She did not return to work until sometime in November.[209]

When Lerczak returned to work in November, she found that the store closed two to three hours earlier on Saturday night. On that occasion, Lerczak was the closing shift supervisor.[210]

F. Camp Road

1. Union Activity

William Westlake and Gianna Reeve led the organizing effort at the Camp Road store. Both signed the August 23 letter, signed authorization cards, and wore prounion pins at work. Between August 22 and 29, Westlake and Reeve successfully obtained 16 signed authorization cards from coworkers, including their own.[211]

On August 30, Camp Road store employees filed a petition in Case 03-RC-282127 to form a bargaining unit representing the store's 30 full-time and regular part-time baristas, shift supervisors, and assistant store managers. Excluded were store managers, office clericals, guards, and "supervisors as defined

[206] Rizzo lacked recollection about September 11, but did not otherwise dispute the substance of the written discipline issued on September 24. (Tr. 738-739; R. Exh. 308.)

[207] There is no evidence that Mendoza's actions, based on Dragic's coughing, were inconsistent with the Respondent COVID-19 protocols. Nevertheless, I credit Dragic's detailed testimony that it was Mendoza, not DeFeo, who sent her home after applying the COVID coach protocol and then she contracted COVID-19 from her roommate. (Tr. 2156-2158.) DeFeo's testimony, on the other hand, neither specified the amount of time that Dragic was out of work, nor the fact that she became COVID-positive. (Tr. 2992-2994.)

[208] Although the schedule is made three weeks in advance, that does not account for the fact that Dragic, who was out for about four and one-half weeks, brought the problem to Mendoza's attention and she was not restored to eight-hour shifts. (Tr. 2158-2160.)

[209] Besides being dizzy, Lerczak conceded that she was also fatigued ("I as opening, so I was probably tired."). Regarding a runny nose, she "[didn't] recall having one." Since she did not dispute that entry at the time, I find that Mendoza's descriptions of Lerczak's symptoms was not inaccurate. (Tr. 833-836, 852.)

[210] Lerczak did not explain whether this early Saturday closing occurred more than once. In any event, there is no explanation in the record for the early closing time. (Tr. 836.)

[211] GC Exhs. 80-86, 89-97, and 103 at 11.

by the Act."[212]

2. Corporate Officials Visit

Williams, Peck, Pusatier, Shelby Young, and other corporate officials made unprecedented visits to the Camp Road store shortly after the Dear Kevin letter was published. Also, prior to August 23, LeFrois rarely visited the store. That day, and every day thereafter until he left the company, LeFrois was at the Camp Road store.

During Williams' first visit to the Camp Road store, she introduced herself to the employees.[213] When Williams got to Westlake, she asked what issues existed at the store, how management could help, and what needed to be fixed. Sometime later that day, Williams sat down with Westlake and reiterated that she was there to help and support the employees. Westlake expressed his appreciation, but asked how long she expected to be around. Williams replied that she was going to speak with every employee in Buffalo and was going to keep coming back until he told her everything was okay.[214]

3. Store Manager Grants Benefits and Solicits Grievances

William Westlake, a barista, previously expressed interest in promotion to shift supervisor during "partner development conversation" at his previous store, Sheridan & Bailey. He also expressed interest in that position to then-store manager David Fiscus after transferring to Camp Road, but the latter told him that he first needed experience as a barista trainer.[215]

On August 23, the day that the Union campaign letter went public, Fiscus immediately approached Westlake as he arrived to work.[216] He told Westlake that he was promoting him to barista trainer and said he would get it done that week. Fiscus then asked Westlake if he had any suggestions for improvements or repairs in the store. Westlake said he would let him know. Later that day, Fiscus called Danelle Kanavel, a barista trainer, on her day off and asked her to come to the store. When she got there, Fiscus told her that she was being promoted to shift supervisor. Both promotions became effective later that week.[217]

4. Support Managers

a. Constant Management Presence in Store

Fiscus resigned on September 13. He was replaced in September by two support managers, Kelliegh Hanlon[218] and Taylor Pringle. Hanlon arrived on September 13 and stayed until January 13. They performed all of the store manager's functions—scheduling, enforced certain policies and, occasionally, worked on the floor. There were also instances in which they changed play-calling by shift supervisors, such as Reeve.

They stayed until January, when they were replaced by Dustin Taylor. He filled in until late January or early February. They were joined at various times by other support managers, including Taylor Alvarez.

While the support managers were at Camp Road, there was rarely a shift when at least one support manager was not present. This was a departure from the practice during Fiscus' tenure when there would be no manager present in his absence. It was during times when Fiscus was not present that Westlake and Reeve solicited support for the Union and obtained signed authorization cards from coworkers. In contrast with the open dialogue between employees when Fiscus was not present, the constant presence of support managers diminished such communication.[219]

b. Mobile Orders

While he was the Camp Road store manager, Fiscus would never turn off the mobile ordering channel, even if an employee requested it. After they arrived, however, Hanlon and Pringle told employees to text their requests if they needed to turn off mobile ordering. After the election, in mid-December, employees were instructed to keep mobile ordering on.[220]

c. Employee Communications

Employees at the Camp Road store frequently communicated with each about work-related and non-work-related subjects. That changed after the arrival of support managers, most of whom wore headsets while they were at the store.[221] On one occasion in September, a barista was communicating with coworkers over a headset about the Union when another support manager, Taylor Alvarez, interrupted via headset that they were not allowed to talk about the Union.

On another occasion in early November, Westlake was speaking with a coworker who had been with the company for

[212] GC Exh. 6.

[213] Westlake did not specify the month in which Williams and the other corporate officials first arrived. However, there is abundant evidence in the record establishing that they began visiting all of the stores by late August. (Tr. 1158-1159).

[214] Westlake did not specify what complaints if any, he shared during this conversation, including the concerns he previously shared with Michael Donavan, the assistant store manager. (Tr. 1155-1157.)

[215] Westlake was a very credible witness. Based on his testimony that elevation to barista trainer "just kind of got kicked down the road," I find that their previous conversation took place well before August 23. (Tr. 1151-1153.)

[216] Westlake did not specify whether he arrived prior to 12:31 p.m., the time when the Dear Kevin letter was posted on Twitter.com. (Tr. 1151-1152.) However, based on the strained relationship that Fiscus had with Westlake, coupled with the highly unusual solicitation of a benefit, I infer that Fiscus initiated the conversation in response to the just-announced Union campaign. (Tr. 1208.)

[217] The record does not indicate whether other employees had also expressed interest in or applied for promotions to these positions or that the Respondent disregarded existing selection criteria in the process.

[218] Hanlon, who recently married and now goes by Kelliegh Perez, was promoted to acting district manager a few weeks before testifying. (Tr. 3325.) For consistency, the decision refers to her maiden name.

[219] This finding is based on the credible and undisputed testimony of Westlake and Reeve regarding the extent of union-related communications before and after support managers arrived. (Tr. 1101-1102, 1120-1122, 1190.)

[220] While I credit Westlake's undisputed testimony regarding the mobile ordering practices, it is unclear whether employees were still able to request that mobile ordering be turned off. (Tr. 1175-1176.)

[221] While I credit Hanlon's testimony that she only wore a headset when she was working the drive-through station. However, I was unconvinced by her testimony that other support managers followed the same practice. (Tr. 3334.)

18 years about the fact that she was making slightly more than a shift supervisor hired in 2021. Pringle overheard the conversation and told Westlake that employees were not supposed to be talking about wages.[222]

d. Dress Code

Prior to the Union campaign, the dress code was not strictly enforced at the Camp Road store. After the campaign began, however, Hanlon and Pringle sent employees home to change shirts that displayed graphic designs or were not one of the permissible colors.

Also, at a level setting meeting with Hanlon relating to the dress code and time and attendance policies, Westlake directed her attention to the pajamas she wearing—it was pajama day—and a green shirt being worn by a coworker. Westlake asked whether the Respondent would stop having pajama days or not allow the coworker to wear the green shirt. Hanlon replied, "no." With that clarification, Westlake signed and acknowledged the policies.[223]

5. Operational Changes

In late August, the Respondent opened the store a half hour later and closed one hour earlier. In October, the Respondent reduced Camp Road store hours by closing earlier, at 6:00 or 6:30 p.m. The hours returned to normal after December 9.[224]

In September, Williams, Peck, and Hanlon told Camp Road employees that they could work as many hours as they wanted. However, in September, the Respondent increased the store's staffing with newly-hired employees and temporary transfers from the NFB, Walden & Anderson, and Hamburg stores. The NFB and Walden & Anderson employees were at the Camp Road store in September and October. The Hamburg employees were there from late November to April. Due to the massive increase in staffing at their stores, Hanlon and Pringle told Camp Road store employees they could no longer have as many hours as they wanted.[225]

Moreover, after the December 9 election, in mid or late-December, new assistant store manager Tanner Rees told Westlake that the store was over budget on labor, and hours needed to be cut back. Westlake went to look at the proposed future schedule. He saw that his hours and those of other members of the store's organizing committee at the time—Reeve, Ryan Mox, Elissa Pflueger, Joshua Pike, and "CC"—had been cut.[226]

6. Renovations

In late September, the Respondent renovated the store. The store's damaged flooring, cabinetry, and countertops were all replaced. In addition, the areas beneath the countertops were replaced in order to remediate the fruit fly problem. However, at end of September or early October, the fruit fly extermination process caused extensive damage and the store needed to be closed for a week for further renovations, including replacement of a sink, toilet, and flooring.

7. The Listening Sessions

a. The September 9 Meeting

On September 9, the Respondent closed the store early to enable its employees to meet with Williams, Pusatier, and Peck at a Marriott hotel. Williams opened the meeting by alluding to "insight and feedback" and "raised concerns" by employees at the previous week's areawide listening sessions.[227] Peck then proceeded to outline the remedial steps taken or to be taken by the Respondent to address employees' complaints relating to understaffing, lack of training, and facility issues. Addressing the training concerns, Peck and Williams talked about "operations coaches" that were being brought in to work with Camp Road employees "side-by-side to make sure that you have the resources you need . . . So lots of good stuff coming."[228]

Shifting gears to the union petition, Peck recognized every employee's right to vote but wanted to make sure employees had all the information they needed to decide. In reply to employee William Westlake's comment that the corporate official's request that employees vote "no" was patronizing because 90% of the store's employees signed the petition. Peck replied that the company needed to make sure everyone had all the information they needed. Williams then referred to the union dues employees would have deducted from their paychecks and insisted that having one person represent every other barista was not "the right way for partners at Starbucks."[229]

An employee, Haley Gortzig, disputed Williams' claim that every employee should have a "seat at the table." She explained that she had expressed her concerns in company surveys, and spoke to store managers and district managers in the past, "[a]nd you just don't see anything happen." Peck replied that the Respondent was "going to make sure you have the leaders in place here that are going to do exactly what you're saying because you shouldn't have to wait."[230]

b. The September 10 Meeting

On September 10, Williams, Pusatier, and Peck met Camp Road employees at a Marriot hotel near the Buffalo airport. Approximately five or six employees attended at the direction

[222] These findings are based on Westlake's credible and undisputed testimony. (Tr. 1167-1169.)

[223] Hanlon did not dispute Westlake's testimony regarding this meeting. (Tr. 1172-1173.)

[224] The Respondent did not provide a specific explanation as to why Camp Road's hours were reduced in late August, at or around the time its employees filed a petition on August 30. (Tr. 1169-1170.) Hanlon testified about staffing issues but did not arrive until September 13. (Tr. 3334-3335.)

[225] Westlake did not specify whether the additional hours promised ever materialized. (Tr. 1169-1173).

[226] Although I credit his testimony on this point, Westlake did not explain whether the hours of other employees had or had not been cut. (Tr. 1189- 1190). Moreover, Westlake was out on a medical leave of absence in January and, thus, had no knowledge as to whether employee hours were subsequently reduced. (Tr. 1201-1202).

[227] GC Exh. 98(b) at 1-3.)

[228] Id. at 9-13.

[229] Id. at 13-18.

[230] Id. at 19-21.

of store manager David Fiscus.[231] Throughout the meeting, which was recorded,[232] the corporate officials made it clear that they wanted to know what their problems were so they could fix them:

> Pusatier: [W]e want to understand, you know, what's important to you, and then we'll get to work.[233]
>
> Williams: [W]e had listening sessions and we sat in stores, and we talked to partners. The staffing issues, where you don't have enough people in some stores. Some stores were perfectly well-staffed and some stores there's not enough staffing. And so people are working long days, long shifts. They need – they have to hire a lot of new people . . . hiring new partners that want to be here but don't have the experience to stay and they leave, that when you get yourself in that cycle, the only way you can break out of the cycle is to fix it. And fix it with urgency, which is what you're getting from Deanna today . . . On top of that, we've heard a lot from these listening sessions about facilities issues, about not just calling in and not having people come but calling in and having people come and fix them. And then they don't stay fixed . . . And so the good thing is that we can fix it . . . But you've been disrespected, and we haven't shown up. So we're here. And Deanna is going to walk you through everything we have in the works.[234]

Pusatier: And so what we've done back across in May across the whole company, across the U.S., we put in partners in position where basically the whole job is to help recruit hourly partners. Well, what we've done is we dedicated a partner to this market to make sure that we have a really big flowing pipeline to get candidates for – for the stores to get partners on board. There's also some media stuff we're doing to advertise as well and then with that we have a team of three managers from outside of the market that we've brought in whose whole job is just the interview. Right. So that's they're whole job, is to interview and support you. And then another thing that we've heard is we heard greatly that the training experience is not as good as it needs to be and it's not up to Starbucks standard. . . . And we – we are working to change that immediately. And so we are centralizing training in some closed stores. . . . The other things that we've been talking about are on just the facilities pieces . . . We actually have a whole lot of facilities people here helping to look at your stores. Just make sure that all those things that maybe you've been calling and haven't gotten fixed, that we're getting those addressed for you in a timely fashion. The other things is we've also heard that you want to see your leaders and you want to see them in the store working with you shoulder to shoulder, helping to build your store manager's capability and we're going to get you a store manager soon.[235]

After promising to remedy employees' complaints, Williams, Pusatier, and Peck turned to the company's relationship with its employees and the reasons why bringing a union into the fold would disrupt that relationship:

Pusatier: So that's – ultimately, our relationship with each other and how we interact is critical. And if you think about over the course of our, you know, 40, 50 years as a company no matter what challenge or issue or crises we faced, whether it's big or small, we've always been able to solve them through partner-to-partner interaction. We don't believe that having someone in the middle, a person or an organization, is good for us. We don't think that's effective for us as partners. So I do want every partner to vote. I do want you to vote no. But I do want you to have all the information that you need. So I'm going to stop talking for a minute. And kind of open it up.[236]

Williams, Peck, and Pusatier continued addressing employees' concerns for the remainder of the meeting, expressing sympathy, shock, and dismay for their plight. While insisting that the union campaign had nothing to do with their remedial efforts and promises, they repeatedly acknowledged that the company had not planned to undertaking such actions prior to August 23:

So this is what we do. So union aside, this happens. Right? We get calls from market saying help, help. First (indiscernible) we show up. The (indiscernible). So then like, we go in and we try to fix it. So this is not unique to this market. I think the extent of some of the issues are deeper than we realized. But this is what we do. This is our responsibility. And this is why we're bringing in the folks to help because we need to get you to a point to where you're operating what we would expect at Starbucks and then can sustain it down the road. So yeah, [it's] just like, please help. That's what I heard. If we would have heard that a year ago, we would have been doing the same thing.[237]

Williams: When you said where were you guys two months ago and why are you showing up now, I want to answer that. Because two months ago I didn't know that there were these problems going on here.[238]

Williams: We've done over 2,000 listening sessions this year in the U.S. alone. How we haven't done one in Buffalo, I can't tell you. But I guarantee you're going to have them on a regular basis now. So your voices will be heard on a regular basis, like you should have . . . And we're not going to leave until we have everything – and I said this earlier. I am going to look every single one of you in the eye and I'm going to say, do you have the very best job you can have. Is there anything else you need that you're not getting at Starbucks? Support, training, hours, clean plays . . . So I – again, whatever was, I can't change. But what I can change is what we're doing right now. And you will see evidence, not by our words but by our actions

[231] Gianna Reeve credibly testified that Fiscus told the store's employees that they would be considered no-call/no-show and face disciplinary charges if they did not attend this meeting. (Tr. 1087-1090.)

[232] GC Exh. 87(a)-(b).

[233] GC Exh. 87(b) at 8.

[234] Id. at 13-16.

[235] There is no credible evidence in the record that any Buffalo-area employees asked to have training centralized or Respondent's "leadership" working alongside them. (Id. at 21-23.)

[236] Id. at 25-26.

[237] Id, at 31-32.

[238] Id. at 36.

and the results that you're going to feel in your store that you have the support – you have leaders that love and care about you.[239]

c. The September 12 Meeting

On September 12, Williams, Pusatier, Peck and Chris Stewart, a partner resources leader, met in the early afternoon with almost all of the Camp Road store's employees. Employees were told to attend the meeting by Fiscus. Once again, he told them they faced disciplined if they did not attend. During the meeting, Camp Road remained open with employees from other stores.

At this meeting, Stewart spoke about the "buffet of benefits" that employees currently enjoyed. He then asserted that if the Union became their labor representative, employees might end up with more, the same, or less benefits.[240]

d. The September 15 Meeting

During the next Camp Road meeting on September 15, Williams, Peck, and Pusatier covered much of the same ground—updating employees on the facility improvements underway in stores and the election. The meeting was recorded by Reeve.[241] They explained the accelerated hiring of new employees, the centralized training at the Walden & Anderson store, the planned expansion of centralized training to other stores, and work performed or additional work scheduled to eliminate the bee and fruit problem infestation. Williams also assured the employees that their requests would always be prioritized and lines of communication kept open:

Because as I mentioned last week, and every other meeting we've had, you guys work in the stores, so you know what you need better than anybody else. We can send in anybody and say, this doesn't look right, or the light needs (sic) fixed - - you understand the pinpoints, or the things than can make it easier. And so know that people are gonna be asking a lot of questions, and they're gonna be asking you for your opinion, because that's how we're gonna prioritize the work in the store.[242]

But you will always have this open dialogue with us to say, this is what us working, and this is what is not working, and we're just gonna keep learning together. That's the only way I know how to do this. There's no magic wand here.[243]

Or if you guys want to write them down and send them to us or give them to us, you all have our email - - email addresses. We're happy to do that, too. So I . . . don't want to cut the conversation - - because that's a lot of great information for us to know, and a lot of work that needs to be done.[244]

Employees responded with questions about the work and comments regarding the store's problems. One employee even complimented the Williams Team for their hands-on approach:

> But just to comment, the . . . fact that you went in and were cleaning bathrooms in McKinley kind of got around really quick. I mean, we do appreciate the fact that you're willing to go hands on. I'm just saying, like, I don't see it, and it was really nice.[245]

The Williams Team also addressed the issue of labor representation and its potential effect on the Respondent's relationship with its employees:

> Pusatier: It's just making sure that we listen to what's on your minds. You and every single partner across the whole market because it's very important. And every single partner's voice is important. And - - that's why we really believe that - - that's why I believe that the most important and most effective relationship is - - is between us and without somebody in between us, because your voice matters to me.[246]

At one point, William Westlake, a barista, disagreed with Pusatier's assertion that a Union victory meant that employees would be represented by a union and not by employees. Williams jumped into the conversation, agreed with Pusatier, and explained why the Respondent wanted all employees in the district to vote:

> But we want every partner to have a vote. We believe the right thing - - the right vote is no, because we don't believe that a union should represent any of our partners, even if it is partners that have organized the union. What we actually believe is sitting down like this, having our conversation, and talking to you about what we always should have. What is you guys need? And between partners and partners, that we speak to one another, and we hold one another accountable to doing this work, not having a third party come in to do that. And again, the third party comes in and they will negotiate with us. We won't be able to negotiate directly with you any longer. And to me, that is the most heartbreaking thing of all this, is I want to be able to sit down and make a commitment to you like we have. And I want to earn your trust that you - - you work for a company that you believe in and will honor . . . you as a partner. And I just - - the - - third-party thing is very concerning to me because what we built this company on is our personal relationships with one another. And having a union represent our partners to me seems completely unnecessary. I'm not anti-union in any way. I just do not believe - - I believe that we are pro-partners, and I believe - - I'm pro-Starbucks.[247]

and few employees in attendance behind her. The following day, Westlake attended a makeup meeting for those who The Williams Team concluded by sharing their answers to questions that came up in previous meetings: "typically," all employees have to be members of the union and membership would not be optional; employees in non-union-represented stores would be

[239] Id. at 39-40.

[240] I based these findings on Reeve's credible and undisputed testimony. (Tr. 1094-1096.)

[241] GC Exh. 99(a)-(b).

[242] Id. at 7.

[243] Id. at 23.

[244] Id. at 47.

[245] Id. at 25.

[246] Id. at 18.

[247] Id. at 61-66.

unable to pick-up shifts in union-represented stores; employees would "either get more or less" benefits; and store managers in union-represented stores would be unable to help unit employees by performing some of their work.[248]

d. The November 8 Meeting

On November 8, two days before ballots went out for the December 9 election, the Respondent held its final meetings with Camp Road store employees. All of the store's employees were given individually addressed written invitations to attend one of two meetings. The first was scheduled for 5:00 p.m., the other for 7:00 p.m. The store closed before the first meeting.

Reeve and Westlake received invitations to the 7:00 p.m. meeting. Both requested and received permission from Ashlyn Tehoke, the assistant store manager, to attend the 5:00 p.m. session. Reeve had class the next morning; Westlake worked the opening shift. When they arrived for that meeting, however, they were not permitted to attend—Reeve by Taylor Alvarez, Westlake by three support managers—because they were not scheduled for that meeting. They were given a variety excuses—first, that it was a capacity issue, then when Westlake noted that there were only a few employees present, a support manager said there would not be enough macaroons for everyone if they let him in. Westlake said he did not care about getting a macaroon, but the support managers did not budge.

After being refused admission, Reeve sat outside the meeting and took a photograph of herself depicting the support managers did not attend one of the November 8 meetings. He was the only employee to show up. Ultimately, no one was disciplined for failing to attend one of the two meetings or the makeup meeting.[249]

8. The December 9 Election

The December 9 election tally was 8 votes for the Union representation and 12 votes against. Two ballots were challenged, but were not sufficient to affect the election results. On the date of the election, the voting unit had decreased to 29. On December 16, the Union filed timely objections to the Respondent's conduct affecting the results of the election. With the exception of Objection No. 12, which was withdrawn, the objections generally encompass the complaint allegations.[250] On May 10, the Regional Director ordered a hearing on the objections and consolidated them with the unfair labor practice claims at issue.

9. William Westlake

a. Barista Training Assignments

After being elevated to barista trainer on August 23, Westlake was assigned one barista to train in September. Since the Respondent centralized training at other stores, Westlake has not been given more paid training assignments. However, at the request of managers and shift supervisors, Westlake retrained new baristas after they arrived from centralized training facilities ill-prepared to work at the Camp Road store.[251]

b. Picking Up Shifts

Westlake regularly picked up multiple shifts at the Sheridan & Bailey store through the GroupMe app. On one occasion in December, Sheridan & Bailey store employees posted GroupMe messages that they needed help because they were down to four or five employees. While on his shift, and after requesting and receiving approval from his shift supervisor, Westlake left after picking up a shift at Sheridan & Bailey. At the time, Camp Road was overstaffed.

When he arrived at Sheridan & Bailey, the customer line was out the door and the drive-through was extremely backed-up. He began by taking out trash and refilling ice bins. Thereafter, a shift supervisor assigned him to a bar station, then to the drive-through. At some point, Greta Case arrived at the store and was told that Westlake picked up a shift there. Case then approached Westlake, who had already been working for two hours. She told Westlake he was no longer needed to work the drive-through and took his headset. Westlake went over to the shift supervisor and asked for his next assignment. The shift supervisor replied, however, that Case said he was not allowed to continue working in the store. Westlake walked over to Case and offered to continue working. Without any explanation, Case declined Westlake's offer and told him to go home.[252]

c. Reduction in Hours

Westlake was regularly scheduled to work 38 or more hours per week. Sometime in late December, he arrived at work and was met by Tanner Reese, the new assistant store manager. Rees told Westlake he would be scheduled to work up to 25 hours per week going forward because the store had been exceeding its allotted labor hours. Westlake went to the back room and checked the future weekly schedules. In addition to himself, he noticed that hours had been cut for the other members of the store's organizing committee—Reeve, Ryan Mox,

[248] Although the complaint alleges at ¶ 10(b) that Pusatier stated that managers in unionized stores would be unable to assist employees on floor, Reeve corrected the transcript to reflect that the statement was made by Peck. (Id. at 73-85.)

[249] Once again, there was no testimony on behalf of the Respondent disputing the credible testimony of Reeve and Westlake. (Tr. 1110-1113, 1126, 1179-1183.)

[250] Kathryn Spicola, a Camp Road store supervisor called by the Respondent, was visibly annoyed that the process did not end with the December 9 election results. She testified that she personally did not witness any manager or support manager prohibit employees from discussing union activity or threaten or make promises to employees, in advance of the election. Such testimony, of course, is not reflective of that she did not see. (Tr. 3272-3278).

[251] The Respondent's witnesses did not dispute credible testimony by Westlake that barista training at the centralized training stores did not adequately prepare new employees to work at their assigned stores. As a result, they required additional training when they got there. (Tr. 1177-78).

[252] I credit Westlake's detailed account of the events of that day, including his testimony that he was working at the overcrowded Camp Road store when he left to help out at the understaffed Sheridan & Bailey store. (Tr. 1185-1187.) Case's recollection, on the other hand, provided few details regarding their encounter and was unconvincing. She asserted that Westlake was there on his day off, but did not refute his credible testimony that he requested and received approval to leave the Camp Road store in the middle of his shift. (Tr. 3350- 51, 3414.)

Elissa Pflueger, and Josh Pike.[253]

d. Sent Home Due to Illness

In July 2021, Westlake was sent home in accordance with the Respondent's protocols because he showed symptoms of COVID-19. He returned to work after showing Fiscus a negative test. In November, Westlake's shift supervisor sent him home after he showed symptoms of COVID-19. Later that day, Westlake text messaged Ashlyn Tehoke, the assistant store manager, and asked if he could return the next day if he tested negative. Tehoke replied that Westlake needed to quarantine for three days in accordance with the COVID protocol. Westlake returned to work after three days. However, Tehoke then called and told him that she incorrectly applied the protocol, which required him to quarantine for two weeks, even with a negative test result.[254]

9. Gianna Reeve

a. Reduction in Hours

Prior to the organizing campaign, Reeve was scheduled to work as a shift supervisor on approximately 80% of the shifts she worked, and as a barista about 20% of the time. After the campaign started, however, Reeve was only scheduled as a shift supervisor about 50% of the time. Upon returning to school in September, Reeve reduced her open availability by excluding Tuesdays and Thursdays. However, she still continued to work the same number of shifts each week as she did before September. Reeve was given no explanation for the reduction in work as a shift supervisor, although the store did end up being overstaffed in September.[255]

b. Dress Code and Non-solicitation Policies Enforced

In one occasion in late October or early November, Reeve wore a "Black Trans Lives Matter" T-shirt at work. She had worn the shirt at work before without any problem. That day, Reeve was working at the front register taking orders. One customer expressed his support for the organizing campaign and asked Reeve if she had any campaign literature. Reeve asked him to wait until she was not busy. As soon as Reeve no longer had any customers at the register, she went to her locker, got a Union magazine, and gave it to the customer as he was leaving the store.

Later that day, Pringle commented to Reeve that, although the shirt was "cool," it was inappropriate dress, and told her not to wear it on the floor again. After Reeve objected, Pringle explained that she could only wear "Starbucks-approved Black Lives Matter gear." He then had Reeve sign a dress code policy and reiterated that she was not to wear the shirt again. Pringle also mentioned that he saw Reeve hand something to a customer earlier that day and advised her to look over Respondent's solicitation policy.

Sometime in January, Reeve received a telephone call from a partner resources employee named Holly Klein. Klein asked Reeve if she had ever used slurs or hate speech on the floor. Reeve said no, absolutely not. Referring to Reeve's counseling by Pringle over the Black Lives Matter T-shirt and solicitation, Klein revealed that she had a text message from a group chat in which Reeve uttered a slur. Reeve asked what chat she was talking about. Klein told her that the message included a statement by Reeve calling Pringle a "white fucking twink." Reeve, knowing that she made the statement on an employee organizing chat group, asked what group chat Klein got the message from. Klein replied that it did not matter where the message came from and asked Reeve for her definition of "twink." Reeve explained that the term "historically . . . might have been used by some parties as a slur from hate speech, but as it stands today, it is generally used as a slang term or adjective." She insisted it was now commonly used as slang for a "white, usually gay, young man, but usually baby faced and youthful in appearance." Reeve also shared that she was queer, never used the term as a slur, and would not have used it if she had known that it was a slur. If she had, Reeve insisted she would have apologized. Klein concluded by telling Reeve she had enough information and would contact her within a week to let her know more about the investigation. Reeve never heard back.[256]

G. Transit Commons

1. Union Activities

Michael Sanabria, a barista trainer at the Transit Commons store, and a former employee, Robert Huang, signed the Dear Kevin letter. Sanabria was a member of the Union organizing committee. He solicited support for the Union at work, answered questions coworkers had about the Union, and wore a union pin.

On September 9, Transit & Commons store employees filed a representation petition in Case 3-RC-282640, but then withdrew it in order to avoid delaying the December 9 elections at the Elmwood, Genesee Street, and Camp Road stores. On May 22, the Union filed another representation petition, Case 3-RC-294786. On July 11, the Union prevailed in the representation election and, on July 19, was certified as the bargaining representative of the Transit Commons baristas and shift supervisors.

2. The Respondent's Response

a. The Williams Team Visits

As with the other stores in the Buffalo area, Williams, district managers, and other corporate officials visited the Transit Commons store after the campaign went public. Prior to the

[253] Westlake provided no testimony as to whether—and to what extent—other employees had their weekly hours reduced. (Tr. 1187-1189.)

[254] Westlake did not testify whether he showed Tehoke proof of a negative test result. Nor did he recall, as alleged, being sent home on December 23 because of COVID symptoms. (Tr. 1183-1185, 1199.)

[255] Although Reeve conceded that the reduction in shift supervisor work "could" have been due to her reduced availability while in school, she continued to be available for the same number of shifts each week. (Tr. 1107, 1130-1132).

[256] Reeve's credible and detailed testimony regarding these events were not disputed. (Tr. 1114-1119, 1127-1130, 1134-1135.)

campaign, LeFrois visited for about 45-60 minutes once every two or three months. He would introduce himself to employees, but would spend most of his time meeting with the store manager.

For the rest of the officials, the visits were unprecedented. They asked employees about their experiences, what they liked, and what they did not like. The officials also inspected the facility. The visits continued through the fall.

b. Promised Benefits

Prior to managing the Transit Commons store in 2019, David Almond was the Genesee Street store manager for two years. During that period, he served briefly as an acting district manager. While managing the Transit Commons store, Almond also supported the manager at the Transit & French store. He is married to Julie Almond, who was separated from the company in November. He resigned in January.

Sanabria had several conversations with Almond about the Union. Almond said he was supportive of the organizational campaign and mentioned that the announced pay increases were probably related to the organizing campaign.[257]

c. Surveillance

In addition to group meetings with Buffalo-area store managers, corporate officials also instructed managers in one-on-one conversations about the need to monitor union activities in their stores. On one occasion, Murphy called Almond and criticized him for not grasping the reality that employees were discussing unionization and filling out authorization cards. She ordered him to change the schedule so that either he or Mary Harris, a support manager, were present in the store at all times. Referring to the Respondent's change in tactics, she stressed that a constant managerial presence was needed in order to make employees feel uncomfortable discussing the Union. If they did, Almond was instructed to disagree with them in order to further discourage such conversation.[258]

On August 24 or 25, Michael Sanabria, a barista trainer, was working at the drive-through station wearing his Union pin. At one point, Sanabria turned and saw Almond holding his mobile phone and facing Sanabria in a picture-taking position. It was an unusual occurrence because Almond only took photographs in the store during new product launches.[259]

On another undetermined date, Almond was on the store patio showing Rachel Kelly, a regional operations coach, the loose fencing around the store. Kelly said that the problem would be fixed. Upon seeing an employee arriving for work, she asked Almond who that was. Almond told Kelly that it was "Michael." Kelly then asked if that was "Sanabria." After Almond confirmed that it was Sanabria, Kelly said that it seemed he was carrying a union poster. She then told Almond to accompany her as they followed him into the store to see what he was doing. They waited until Sanabria came out of the back and then went to see what he posted on the employee board. It was a fundraising poster for a cause unrelated to the Union.[260]

d. Renovations

In late October, the Transit Commons store closed for one day for a store reset. Almond, support managers, and several employees, including Sanabria, rearranged the store layout.

Between December 5 and 19, the Respondent closed the store for renovations. The countertops and cabinets were replaced, the artwork and lighting was changed. The store was repainted. One register was removed. The ice machine and awnings were moved to the other side of the store. During this period, employees were given the opportunity to work at another store. Some did.

e. Store and Employee Hours

In September, the Transit Commons store hours were 5 a.m. to 10 p.m. from Monday through Thursday, and 6 a.m. to 10 p.m. from Friday to Sunday. After the December renovations, the store hours changed to 5:30 a.m. to 10 p.m. from Monday to Thursday, and 6 a.m. to 8 p.m. on Friday, Saturday, and Sunday.[261]

Prior to August 23, the Respondent allotted a specific amounts of labor to each Buffalo-area store based on the company's revenue forecasting system. By the middle to latter part of September, the Transit Commons store's available labor hours suddenly increased by 60 hours every week. David Almond was never given a reason for the changed allotment. He did, however, tell Sanabria that the increased hours were in response to the Union campaign.[262]

3. Support Managers

a. Assisted on the Floor

Dimas Niva was the first support manager to arrive in mid-September. He stayed about three months. Like Almond, Niva worked the morning shift and usually left between 2 and 4 p.m. In late October, however, Niva began covering the afternoon-evening shift so that a manager was always present in the store. The constant presence of a manager in the store made it more difficult for Sanabria to talk about the Union. Unlike before, he

[257] There is no evidence that Almond's comment connecting the pay increase with the Union campaign was anything other than conjecture on his part. (Tr. 414.)

[258] Almond conceded that neither Mkrtumyan nor Murphy ever told him to treat union supporters differently. (1879.) Nevertheless, his credible recollection of these conversations was not disputed. (Tr. 1855-1856.)

[259] I based this finding on Sanabria's credible and detailed recollection of the incident over Almond's conclusory denial of the incident. (Tr. 414-415, 1882.).

[260] David Almond's credible account of this event was undisputed. (Tr. 1862-1863.)

[261] Mkrtumyan testified that there were times during Fall 2021 when store hours in Buffalo-area stores were reduced due to short staffing, call offs, COVID, and weather. However, she did not specifically address the reasons for reduced Transit Commons store hours. (Tr. 3425.)

[262] Mkrtumyan testified that employees were offered additional labor hours to enable them complete store resets. (Tr. 3459-3460.) She did not, however, refute the credible testimony of David Almond and Sanabria that the increase in employee hours continued indefinitely. (Tr. 414, 1866.)

found that employees were now shying away or shushing him whenever he tried to engage in such discussion.[263] However, Harris arrived in November and stayed about two weeks. The support managers mostly worked on the floor along with the baristas.

b. Stricter Enforcement of Rules

In October, the Respondent began strictly enforcing the dress code, time and attendance, and employee purchasing policies at Transit Commons. Prior to that time, the store manager routinely ignored violations of the dress code policy. He was also lenient if employees arrived to work a few minutes late. In addition, employees were never required to wait on the customer line to make a purchase during their breaks. However, the policies were strictly enforced after the new store manager, Gavin Crawford, arrived in early December.

4. The Listening Sessions

a. September

On a date in September, the Transit Commons store closed early for a listening session.[264] Williams, Peck, Pusatier, Modzel attended, along with about 20 Transit & French store employees. After the coffee tasting exercise and introductions, Modzel reported what the Williams Team was hearing from other listening sessions, what was and was not working, "and so we've sprung into action." He identified those complaints as staffing shortages, training, broken equipment and facilities, and bee infestation. After explaining what the Respondent doing to rectify those problems, Modzel invited the Transit Commons store's employees to share their concerns:

And if there's more, we're listening. And I don't want you to think that this is unusual. And what I will tell you is, I took over Washington, D.C. a few years ago, and when we hear from partners, and I did, that there are opportunities that we need to improve to make the experience better, we show up and we act. And I can give you countless examples of how when our partners have spoken up, we show up and we do something about it.[265]

Before employees could comment, Williams and Pusatier mentioned complaints about the store's small ice machine and their resolve to replace it with a larger one. Williams then expanded on that issue to assure the employees that they would have the contact information for her, Peck, and Pusatier in case they ever needed to reach out:

> If in fact you have a challenge and you feel like you're raising it, and you don't feel like you're getting any result, like your nitro machine, that if your DM is not responding, then you've got Deanna. Everybody is going to have - - everybody should have Deanna's email address, her phone number, and if . . . you raise it to Deanna and she doesn't fix it, then you've got Allyson, who's your RVP. She's got a phone number that she answers and an email that she answers. And if she can't fix it, then you've got me.[266]

Williams also reinforced the significance of the partner-to-partner relationship and the ability to "talk and listen to each other." Describing the uniqueness of the Respondent, Williams insisted that:

The most precious thing we have is our relationships with one another. We can't let that - - something come between our relationships; that's just too important.[267]

During this meeting, employees discussed not having enough labor hours to properly clean their store.

b. The October 20 Meeting

Prior to October 20, Almond handed certain employees, including Sanabria, scheduling them to attend a meeting that day with management at a hotel near the airport. Sanabria and one other Transit Commons employee attended the evening meeting. It was similar to other meetings held that day. A partner resources employee who gave a slideshow presentation about the Union and the likely consequences of union membership. Mkrtumyan and Modzel were also present.

H. The Walden & Anderson Store

1. Union Activity

Colin Cochran began working as a barista at the Walden & Anderson store in the summer of 2021, prior to August 23. Cochran was a member of the organizing committee, signed the Dear Kevin letter, and led the campaign at his store. Beginning August 23, he solicited coworkers about the campaign and obtained signed authorization cards.

2. The Representation Elections

In September 9, the Union filed a representation petition in Case 3-RC-282641 for the Walden & Anderson store, but then withdrew it. On November 9, a representation petition was filed in Case 3-RC-285929. On March 9, the tally revealed 8 votes in favor of representation and 7 votes against representation. After two rounds of timely objections to the election and the opening of seven additional ballots, the revised vote was 10-10, with one determinative, unresolved challenged ballot. Those vote totals remained after the Regional Director ruled on objections.

On May 18, the Regional Director directed a rerun election by mail. At that time, there were 30 eligible voters. On July 15, the tally of ballots issued and revealed an 8-8 vote, with one ballot challenge. On July 27, the Regional Director overruled the ballot challenge and, after ballots were opened the revised tally revealed eight votes in favor of representation, and nine

[263] Sanabria's credible testimony regarding the impact that the constant managerial presence had on him confirmed that the Mkrtumyan/Murphy strategy to stifle such activity succeeded. (Tr. 422-423.)

[264] Sanabria recorded the meeting but did not recall the date. (GC Exh. 43(a)-(b).)

[265] No specific date was specified by Sanabria or in the transcript. (GC Exh. 43(b) at 17-25; Tr. 426-468.)

[266] Id. at 29-33.

[267] Id. at 44-45.

votes against representation.

On August 22, the Union filed 11 objections to the second election and an offer of proof mirroring many of the allegations at issue in this proceeding. On September 6, the Regional Director overruled the Union's objections as untimely and certified the results of the election in favor of the Respondent. On December 30, 2022, the Union requested special permission to appeal the Regional Director's order. On January 3, 2023, the Office of the Executive Secretary refused to forward the Union's request to the Board on the ground that there "is no avenue in the Board's Rules and Regulations for a request for permission to appeal in a representation case."

3. The Williams Team Visits

Prior to the campaign, Walden & Anderson employees rarely saw Shelby Young, the district manager. After August 23, Young was in the store very often until she was replaced by Szto. As they did with the other Buffalo-area stores, Williams, Peck, Pusatier, and other corporate officials also visited.

4. Store Hours

The Walden & Anderson store hours changed by late August. The store started opening a half hour later, at 5:30 a.m., and closing an hour earlier one hour earlier, at 8 p.m., and leaving at 8:45 p.m., instead of a 9 p.m. closure and 9:30 p.m. departure.[268]

5. The Listening Sessions

a. The September 2 Meeting

Cochran attended one of the September 2 listening sessions conducted by the Williams Team. At that meeting, Cochran asserted that he and his coworkers supported unionization because their complaints to the store manager were never acted upon. He mentioned the persistent bee infestation in the store and insufficient employee training. On September 3, an exterminator came and addressed the bee problem.

b. September 28

On September 28, the Respondent closed the early store closed early so employees could attend one of several listening sessions. Their assigned meeting was on the printed schedule. About five employees attended. At that meeting, Szto and Kelly discussed the withdrawn petition and the ramifications of union membership. Cochran pushed back, disputing their characterization of the Union as a third-party and assertions about mandatory union dues.

c. October 19

On October 19, the Respondent held several meetings for Walden & Anderson store employees at a Buffalo hotel. Store employees had been given individually addressed written invitations with the time of their assigned meeting. Cochran attended the evening meeting and three other store employees attended. Cochran recorded the meeting.[269] The meeting was led by Szto, Michaela Murphy, and Kelly. Kelly gave a PowerPoint presentation and update regarding the Union campaign and the election process. She talked about the Union, its structure, and its reliance on "worker dues, fees assessments, and fines. . . [and] . . . a per capita tax . . . that actually gets paid to the International." In response to Kelly's statement about declining Union membership, Cochran replied that it was due to the pandemic.[270]

After Kelly finished, Szto stated that the store would be reopening in mid-November. He mentioned that the Respondent was reviewing employee complaints about (1) the loss of the food benefit during the closure, (2) and the October pay increase's failure to relieve pay compression.[271] Murphy provided an update about the company's response to employee complaints by remedying pest infestation in the store, and improving new employee training, increasing promotional opportunities to shift supervisor and assistant store manager positions. She stressed that "the store resets have been happening across the Buffalo market for quite some time now in the last couple of weeks."[272]

d. December 14

The Respondent closed the store early for held another employee meeting at the Walden & Anderson store on December 14. Employees were scheduled meeting at the store with Szto, Peck, Mkrtumyan, and Kelly. Cochran recorded the meeting.[273] Mkrtumyan told employees that employees did not need representation in order for her to talk to them and mentioned the uncertainties of a contract.[274] Kelly followed with her customary practice of making factual assertions about the unionization and then characterizing them as "questions" that employees needed to ask the Union. These included assertions about the uncertainties of a contract, union dues, employees at the bargaining table without having a "voice" in negotiations, and the inability of employees to pick up shifts at other stores. Cochran disputed several of those assertions.[275] The discussion became quite contentious as other employees joined Cochran in disputing continued statements by Kelly and Mkrtumyan that employees would not have a say in an eventual contract because they would be able to vote for or against it. Kelly replied:

> I will say from my experience, I have not seen a situation where there's been a contract that's negotiated and then it goes to a vote. I can say that from my experience. . . So I mean, it's a great question, to ask you know - -[276]

[268] Cochran testified that the store's hours were reduced in late August but did not provide an explanation as to why. (Tr. 1927.) Neither did the Respondent's witnesses. Mkrtumyan testified, however, that Walden & Anderson was able to send staff over to Genesee Street to help that store stay open. (Tr. 3426.)

[269] GC Exh. 137(a)-(b).
[270] GC Exh. 137(b) at 19-28.
[271] Id. at 29-32.
[272] Id. at 32-34.
[273] GC Exh. 138(a)-(b).
[274] GC Exh. 138(b) at 16-26
[275] Id. at 17-21.
[276] Id. at 28.

e. The January 4 Meeting

Mkrtumyan and Kelly had a final round with Walden & Anderson store employees on January 4. Once again, the Respondent placed the meeting on employees' schedules. Cochran recorded the meeting. Mkrtumyan and Kelly reiterated their arguments from the December 4 meeting. Mkrtumyan also detailed the improvements made by the Respondent to Buffalo-area stores in the past four months.[277]

6. Support Managers

Tito Santiago was the first support manager to arrive. After the store manager, Jonathan Primo, left in September, Santiago took over as store manager. He was replaced as store manager about one week later by Romalie Murphy. Romalie Murphy remained the store manager until January. She was supported by Aimee Alumbaugh, who was one of the store's trainers in September-October. When Romalie Murphy left in January, Alumbaugh served as store manager until Michaela Fascitelli arrived in March or April. Prior to the campaign, Prime worked about 40 hours per week, there were times when there was no manager in the store. After the support managers arrived, they were constantly present in the store, sometimes 2-3 on a given day.

7. Conversion to a Training Facility

On September 5, Prime told employees the store would be closed on September 6 for retraining and pest control. Subsequently, they were told that the store would remain closed to the public for an indeterminate amount of time to serve as a training facility for all of the Buffalo-area's newly hired employees. As previously noted, this departed from the typical training process at Buffalo-area stores where employees were trained at their home stores during normal operating hours.[278] From September 5 to November 6, when it reopened to customers, the Walden & Anderson served as a training center. The managers in charge included Santiago, Romalie Murphy, and Alumbaugh. In putting together training staff for the Walden & Anderson centralized training, Murphy assigned four of the store's shift supervisors to serve as trainers. She also asked them to recommend baristas to work as barista trainers. Based upon their recommendations, Murphy appointed Cochran and one other barista, "Liam." Since the store was closed to customers, fresh food was not delivered to the store, and the mobile ordering and drive-through channels were disabled. Thus, new employees were only trained on bar. Moreover, since the store was not serving food to the public, employees were unable to use their free food and beverage benefit there.[279]

8. The Store Reopening

The Walden & Anderson store reopened to the public on November 8. The store reopened slowly—one channel at a time. Initially, the Respondent only opened the drive-through. After several weeks, the café opened to customers. Mobile ordering, however, was not re-enabled for at least several months thereafter.[280]

9. Dress Code Enforcement

Prior to the campaign, the dress code was not strictly enforced at Walden & Anderson, including the requirement that only one pin be worn. Prime did not permit Walden & Anderson store employees to wear graphic T-shirts. On one occasion, he admonished an employee for wearing sweatpants. However, employees were not sent home for dress code violations. After the campaign started, the dress code was strictly enforced by Prime and then Romalie Murphy. The wearing of multiple pins was of particular concern to the managers, who required employees to remove pins if they were wearing more than one.

10. Colin Cochran

a. Training opportunities

After the Walden & Anderson store reopened to customers, Cochran never offered any more barista training assignments. Those opportunities went to Liam and Claire. Cochran asked Alumbaugh about it on two occasions. She blamed the oversight on a scheduling glitch. However, with the exception of one training shift that Claire, who had just been hired in April, asked Cochran to pick up for her, he has never been given any more training assignments.[281]

b. Promotional Opportunities

When he first started, Prime asked Cochran to apply for an open shift supervisor position. Cochran declined at that time, but applied online for the position when the opportunity arose in November. Despite speaking to Romalie Murphy and Santiago, Cochran never heard back about that application.[282] He applied again for the position in the spring, but was not selected

[277] GC Exh. 136(a)-(b).

[278] Given that Buffalo-area stores needed to retrain baristas after they reported to their assigned stores, I do not credit Heather Dow's testimony that the centralized training ensured that employees were being treated properly. (Tr. 3085-3086.)

[279] Alumbaugh did not dispute Cochran's credible testimony that employees were unable to use their free food and beverage benefit at the Walden Anderson store while it operated as a training center. (Tr. 1937, 1962-1963, 3100-3101.)

[280] Support manager Aimee Alumbaugh testified that the Respondent "wanted to open channels slowly because we had hired over 50 percent new partners in that store, so we were giving them time to get accustomed to making drinks and things like that with actual customers in the building." She did not, however, testify if the mobile ordering channel ever reopened. (Tr. 3101-3102.) Cochran was not sure if and when mobile ordering resumed, but placed it at several months thereafter. (Tr. 1937-1938.) In contrast to other store employees, however, there is no indication in the record that any Walden & Anderson store employees ever requested the disabling of mobile ordering.

[281] I based these findings on Cochran's credible testimony. Alumbaugh testified that Westlake wanted to work peak time—opening shifts—and she made him aware that training was not done during those periods. (Tr. 3103-3104.) However, Alumbaugh did not dispute Cochran's testimony that he approached her about being passed up for assignments and she told him that it was due to a scheduling glitch. (Tr. 1937-1939.)

[282] Alumbaugh was unaware that Cochran applied for the position but recalled him a barista for four months, that the position required six months to qualify. (Tr. 1939-1942, 3103-3106).

for an interview. Cochran applied a third time in the summer of 2022, but did not get a response. He asked Fascitelli about it, but she told him that she had not heard anything about it. She said she would put in a good word for Cochran and thought he would be a good shift manager. She added, however, that she did not have control over the situation.

c. Conversation with Mkrtumyan

Sometime in November, Cochran told Mkrtumyan that his girlfriend, Kaitlyn Baganski, was considering applying for a job with the Respondent. On November 17-18, Baganski applied online. She did not get on offer in response to that application. However, Baganski reapplied exactly one month later. One day later, she was contacted and interviewed by a recruiter. She was offered and accepted a barista position the next day. After training at the East Robinson store, she was assigned to the Sheridan & Bailey store.

I. GALLERIA KIOSK

The Galleria kiosk is currently owned and operated by the Walden Galleria as a licensed store. Until September, it was the smallest unit in the Buffalo area.[283] It was also a source of significant union activity. At least four kiosk employees signed the Dear Kevin letter and wore prounion pins, including Erin O'Hare, a shift supervisor, and Samantha Banaszak, Roisin Doherty, and Willy May. As members of the organizing committee, O'Hare and Doherty, along with others, quickly gathered authorization cards from a majority of the store's workers. O'Hare even spoke about the union campaign in front of her manager, Chris Winnett. As others were reluctant to sign a petition, however, supporters held off filing a representation petition.[284]

The Respondent's response teams visited the Galleria kiosk soon after August 23. They included Williams, Pusatier, Szto, the new district manager, and Shelby Young, his predecessor.[285] During one of these visits, Williams was speaking with Winnett. O'Hare interrupted them to complain about an oven that kept going on fire. Although she previously put in a service request for the oven to be replaced, the request was not given priority and nothing had happened. The oven was replaced with a new one the following day.[286]

Winnett encouraged Galleria kiosk employees to attend one of the initial listening sessions on September 2 and 3. Doherty attended the 2 p.m. meeting on September 2 and shared coworkers' concerns previously shared with Winnett: the store was understaffed, in bad shape, unsanitary, plagued by fruit flies, and lacked protection from sunburn and overheating.

Shortly after that listening session, Winnett and Young informed employees that the kiosk would close on September 8 to retrain employees, and clean and reorganize the store. During the first week, employees were paid for retraining, cleaning and reorganizing the kiosk. At the end of the week, Winnett told the employees that it would remain closed for another week so they could hire more employees and train those recently hired.[287]

After being temporarily closed for two weeks, Szto, Young, and Winnett called employees in for a meeting. Before the meeting started, Szto and Young met briefly with Winnett. When they sat down, Winnett was visibly upset.[288] When an employee asked Winnett what was wrong, Szto announced the company's decision to close permanently close the kiosk and provided several reasons for the closure: the kiosk was a low performing store, the Respondent planned to close mall stores around the country, and drive-through stores were a better fit for the Buffalo market.[289]

At the time, the kiosk, which should have been staffed by 20 employees, had only eight employees working there.[290]

After the announcement, employees were given transfer request forms, and instructed to list their desired destinations in order of preference and return them to Szto. Doherty listed the following stores in order of preference: Elmwood, Delaware and Chippewa, and Sheridan and Bailey. Initially, Doherty

[283] Madison Emler, a barista at Transit & Maple, credibly testified that she picked up shifts at several locations, including the NFB store drive-through and the Galleria kiosk about 5-10 times until June, and found the latter to be the busier location. (Tr. 542-543.)

[284] All of the findings relating to events involving the Galleria kiosk are based on the credible and undisputed testimony of Roisin Doherty and Erin O'Hare (Tr. 1279-1280, 1786-1788.)

[285] Emler and Pusatier both testified that the kiosk was in disrepair. Pusatier testified that, notwithstanding the company's initial actions and representations to employees, the Respondent made the decision to close the kiosk "[p]retty quickly" after she visited on September 1 because the cost of a rebuild "did not make financial sense." (Tr. 543, 2836-2837, 2852-2853.)

[286] O'Hare did not say how long the request was outstanding. Judging by the nature of the malfunction, however–an oven that went on fire–every day that passed was one too many. (Tr. 1789-1790.)

[287] These findings are based on the credible testimony of Doherty and O'Hare. (Tr. 1285-1287, 1791-1792). Neither Young nor Winnett testified.

[288] Winnett's reaction was not surprising, given that there is no evidence in the record that the Respondent planned to close the Galleria kiosk prior to August 23. Mkrtumyan, who was not involved in the decision to close the kiosk, cited numerous instances where the Respondent decided to close stores in the Washington, D.C. area. (Tr. 3379-3380.) Nevertheless, I do not credit Pusatier's uncorroborated hearsay testimony that Young, the former district manager, called and asked her to close the kiosk. Nor do I find reliable Young's business record of the closing stating that "[a]fter recent market visits, senior leadership agreed to leave the location closed and processed for official permanent closure" on September 6. (R. Exh. 138 at 1.) There was neither testimony nor an indication on that record as to when it was generated. Nothing in the substance of that report reflected anything that the Respondent told employees before making the sudden decision. The report was also missing "Annual Profit History/Projections" for "JunFY21," which covered September. Id, at 2. However, "Comp Sales Growth for FY21 showed an increase of 40.8% year over year, and sales showed a fairly steady increase in sales in sales between October 2020 ($74,007) and June 2021, the last month that sales are reported ($124,915). Id. at 3.

[289] Pusatier asserted that the Respondent was closing its mall kiosks around the United States but gave only one specific example of one that she closed in Boston. (Tr. 2853.)

[290] O'Hare admitted the kiosk was supposed to have 20 partners but only had 8 when it closed because so many new hires quit. (Tr. 1788, 1816).

worked shifts at several stores, including Elmwood. While working at Elmwood, she mentioned to Williams that Delaware & Chippewa were her preferred stores. Shortly after that conversation, Doherty was transferred to Delaware & Chippewa.

In O'Hare's case, the kiosk closure was an opportunity to land at Elmwood, where she requested a transfer to in January 2021. At some point, Winnett told her that her transfer request was on hold until she could be replaced by another shift supervisor. O'Hare brought up the transfer request again in a conversation with Young during the first week that the store was closed for cleaning. At the time, O'Hare was scraping sludge off the kiosk floor. Young assured O'Hare that she would personally make sure that O'Hare transferred to Elmwood. Needless to say, O'Hare listed Elmwood as her first choice, followed by Delaware & Chippewa, Delaware & Kenmore, and Main Street.

O'Hare's transition did not go as planned as expected. She was initially transferred to Delaware & Chippewa. After one week at that store, the store manager, Robert Hunt, told O'Hare that he could not fit her into the schedule because he already had too many shift supervisors—11. Since she was the Respondent was not providing O'Hare with shift assignments at that point, she reached out to Buffalo area employees to pick up shifts through the GroupMe app.

Over the next several weeks, O'Hare was able to pick up shifts at several stores, including Orchard Park, Elmwood, Delaware & Chippewa, and Main Street. However, the hours worked and pay earned during that period was less than what O'Hare was typically assigned and paid at the Galleria kiosk. O'Hare informed the store manager at each location that she did not have a permanent store assignment. She also mentioned it to Szto during the October 1 listening session at Elmwood. He told O'Hare that he would step in and help. Finally, around the end of October, O'Hare was permanently assigned to the Main Street store.[291]

J. Sheridan & Bailey

1. Union Activity

James Skretta, Rachel Cohen, and Daniel Rojas were the leading Union supporters at the Sheridan & Bailey store. Skretta was a founding member of the organizing committee and signatory to the Dear Kevin letter. Rojas, a shift supervisor, joined the committee in September, wore prounion pins and solicited coworkers to support the Union. Cohen, also a shift supervisor, joined the committee in November, and wore prounion pins and shirts. On November 10, the Union filed a representation petition to represent Sheridan & Bailey's hourly employees.

2. Visits by Company Officials

Prior to August 23, the district manager at the time, Shelby Young, visited Sheridan & Bailey two to three times a year to meet with the store manager, Matthew Morreale. After August 23, Young came to the store almost every day and met with the Morreale for most of the day.

Williams and other corporate officials started coming a few days later. It was the first time any of them had visited Sheridan & Bailey in the past 10 years. The corporate officials would talk with baristas and shift supervisors on the floor or pull them aside. They cleaned, took out the garbage, and asked employees if they liked how the store was set up, and if there was anything that needed to be changed or repaired. Most days, there was at least one person from the Williams team at the store.

3. Support Managers

a. Constant Store Presence

The first set of support managers, Derek Sveen and Sarah Tromp, arrived at the Sheridan & Bailey store in early October. On October 18, Szto terminated Morreale for failing to comply with the Respondent's COVID protocols on September 14 and then failing to produce over nine weeks of employee check-in logs.[292] Support managers came and went over the next six months, assuring that one, and sometimes two, were present in the store during all working hours. They included Amanda Bogges, Amy Ruiz, Alexander Roux, and Jared. Prior to August 23, there was no manager in the store whenever Morreale, who worked 40 hours a week, was not in the store.

b. Stricter Enforcement of Rules

Prior to August 23, Morreale did not strictly enforce the dress code. Employees were told not to wear graphic T-shirts or canvas shoes but were never disciplined. Employees were also afforded a grace period if they arrived to work a few minutes late. That changed after the support managers arrived.

In November level setting meetings with employees, Sveen and Bogges met with employees and required them to acknowledge in writing that they understood these policies and would be disciplined if they did not follow them. The support managers began strictly enforcing the dress code. On November 25, Bogges, with Peck present, reprimanded Skretta for wearing shoes that did not comply with the dress code. The shoes had been worn the entire time Skretta was employed by the company, including the previous week when Skretta and other store employees signed and acknowledged the dress code. No manager ever told Skretta that the shoes were out of compliance.[293]

c. Headsets

Most of the support managers wore headsets at all of the time that they were in the store. Prior to their arrival, store manager Mark Morales never used a headset and store employees only used them while working the drive-through or warming stations. Moreover, store employees were aware of that practice by support managers and curtailed nonwork-related discussion, including matters about the union, as a result. Alex Roux served as the store manager during the third week of December until the first week of March 2022. In contrast to the

[291] GC Exh. 28(a) at 60-64.

[292] R. Exh. 143.

[293] Skretta admitted he was not disciplined for wearing the shoes. (Tr. 2475, 2493-2494.)

support managers that preceded him, however, Roux only wore a headset when he was "in the play."[294]

4. Operational Changes

a. Picking up Shifts

Prior to November, employees picked up shifts through BuffBux group text messaging and then informed the store manager. In November, Sheridan & Bailey employees were informed that any shift switches needed to be preapproved by the manager of each store. Skretta attempted to switch shifts with Camp Road employee William Westlake after the change in practice. He previously switched shifts on several occasions at Sheridan & Bailey, as well Orchard Park, his former store. His request was approved by Sveen, but not by Camp Road's manager.[295]

On January 1, Cohen drove to another store to drop off supplies and noticed they were overwhelmed. Neither the manager nor store manager was present. Cohen text messaged Case and for approval to stay and help out. She did not hear back and left after 20 minutes. Case called Cohen back about an hour later and said, "they were fine."[296]

b. Playbuilder

In the fall of 2021, Case and Szto required shift supervisors, including Daniel Rojas, to use the Playbuilder tool when deciding where to position employees.

c. Union Literature

Prior to August 23, employees normally placed work and nonwork-related literature near the employee sign-in sheet or the refrigerator in the back room. In November, several employees began posting union literature there—shift supervisors Rachel Cohen and Daniel Rojas, and Sam Amato. However, the literature was always removed, while other nonunion-related materials remained—announcements for community events, employee gift exchanges, and Lyft car service information.

Cohen asked store manager Derek Sveen and support manager Amy Ruiz about that. Sveen told Cohen that nothing, except for the schedules, were allowed to be posted there. Ruiz told Cohen that the Respondent adopted a new policy permitting only company-approved postings. Rojas asked Greta Case the same question. Case's explained that, in accordance with the company's no-solicitation policy, only milk schematics could be posted on the refrigerator. However, other company postings remained in an area by the manager's station.[297]

d. Insufficiently Trained New Employees

In September and October, Sheridan & Bailey received 10-15 new employees trained at the central training locations. Upon their arrival at Sheridan & Bailey, however, new employees had to be trained and retrained in several respects. Although the store had three barista trainers, that task did not fall to them. Instead, Cohen and other shift supervisors had to train them do the training or assign the new employees to shadow other baristas.

5. Store Renovations

On October 13, the store closed for a reset. Employees deep cleaned the store, rearranged products, and a new cash register was installed.[298]

Sheridan & Bailey was equipped with old coffee bars. New bars had been ordered months earlier. When Williams came to the store in or about December, she asked employees what needed to be changed or repaired. She also mentioned that other stores were getting new bars. Cohen spoke to Williams about the condition of the bars. New bars were installed within several weeks. In January, a new computer was installed in the back room.[299]

Prior to August, employees requested repairs by calling the facility department. The issue would be resolved within a certain amount of time depending on the level of the priority. A new repair ticket system was put in place after August. However, the time it took to get things repaired remained the same.

6. The Listening Sessions

a. September 2

On September 2. Sheridan & Bailey closed early so employees could attend the listening session at the Main Street store. Employees learned of the meeting through a flier posted in the back of the store.[300]

b. September 30

Sheridan & Bailey closed early on September 30, for a meeting at the store with Szto and a partner resource employee. Employees were notified of the meeting in a flier posted in the

[294] Although I credited Roux's testimony regarding his limited use of headsets (Tr. 3044.), I based the findings as to the other support managers' practices on the credible and undisputed testimony of Rojas and Skretta. (Tr. 2093-2094, 2464-2468.)

[295] The implementation of a policy denying employees the opportunity to pick up or swap shifts at other stores was unprecedented in the Buffalo market. As Skretta credibly explained, employees would need to be mindful of not going into overtime (40+ hours). If so, employees knew to request formal approval. (Tr. 2487-2488.) Again, the Respondent's contention—that this action was necessary in order to prevent employees from going into overtime because their managers did not know about it—was not credible. (Tr. 2733.) Employees were never given that or any reason for this unwritten policy. Nor is there evidence that employees were paid incorrectly or complained about being paid incorrectly after picking up shifts through the informal BuffBux chat system.

[296] Cohen did not specify the name of the store or why the employees "were really struggling and had a lot of problems." Nor is it clear whether there was even a shift available to pick up. (Tr. 921-922.)

[297] I based these findings on the credible and undisputed testimony of Cohen and Rojas. (Tr. 911-912, 2094-2095.) I credit Case's testimony that the flyers were covering milk schematics. However, she did not refute Rojas's testimony that only nonunion-related flyers were posted in the "relocated" area by the manager's station. (Tr. 3357-3358.)

[298] GC Exh. 53- 55.

[299] It is unclear from Cohen's testimony as to when the new computers and cash register were also installed. (Tr. 877-880.)

[300] GC Exh. 56(a)-(b).

store. The flier listed the date, time, and location, with a note: "Any questions or concerns please reach out to" Williams, Peck, Pusatier Mkrtumyan, or Szto, and listed their email addresses.[301]

Nearly all of the store's employees attended. They were told that the purpose of the meeting was to answer any questions the employees had. Employees asked several questions, mostly relating to healthcare. There were not a lot of answers.

c. December 16

On December 16, the store closed early for two employee meetings with Pusatier, Szto, Case, and Kelly.[302] Skretta recorded one of the meetings.[303] Case spoke about the three stores that voted the week before and what that meant for Sheridan & Bailey store employees, "because you're in a petitioned location." Skretta disputed several statements by Case and Pusatier regarding the Union's challenges to several voters in the Genesee Street election. Kelly talked about the uncertainties in collective-bargaining regarding pay, benefits and being able to transfer to other stores.[304]

Szto then opened the floor to questions and comments. Employees voiced concerns about pay, benefits, and inadequate training. Pusatier and Szto explained that those concerns were already being addressed in the Buffalo market based on feedback from Buffalo-area employees. Szto added "that we have decided that we really need to make sure that we hear something's not going well, that we are listening and doing what we can to make things better."[305]

Before the meeting concluded, Szto recapped the Respondent's actions in the Buffalo market, including equipment changes and facility improvements, and assured them that there was more to come:

> And something that's also happening that you should start seeing more of is the development conversations. So one of the things that . . . you know, local leadership team, and really across the U.S. is making sure that we have time on a regular basis to have development conversations with each of you. And your managers are to do this with you in a way that actually really identifies what's important to you, what aspirations do you really want to focus on, and what are some things that you really want to do? So those are some things that are part of this work that we're doing that's really what we deal with all across the U.S. So keeping that in mind. Some other things that we're also considering that we looked at too is, like how do we actually look at the store and make it more efficient for you. So whether it be renovations, those bigger changes, we're considering all those things to make it a better experience for our partners because we know how hard it (sic) sometimes when things aren't working. We've been in stores. You've seen many support partners in the market ask questions. Like, does this work; does this not work; what's your input. And those are some of the things that we want to continue to hear from all of you to make sure we can make it a better experience when it comes to your store. And we know that you are here for a reason, and we want to make sure that that experience you're having is one that you're proud of, that every day that you come to work makes you want to be here and working together and having the right support is something that we always want to strive for.[306]

7. Daniel Rojas

Rojas was hired by the Respondent in September 2018. He was promoted to shift supervisor in May 2019. Rojas started out in California and transferred to Sheridan & Bailey in June 2020. In October 2021, he had a conversation with Williams at Sheridan & Bailey in which he talked about his history with the company, desire to be promoted and get his own store, support for the Union and fear of retaliation. Williams told him he would not experience retaliation, and if he did, to contact her.[307]

On January 21, support manager Ruiz issued Rojas a documented coaching relating to time and attendance and reporting to work sick. On the form, Rojas wrote that he had always called the store—the correct protocol—whenever he was going to be late, and did not know in advance that he would fail the COVID coach. No manager had ever spoken to Rojas about any of his tardy instances prior this discipline, including at the time he reacknowledged the time and attendance policy in November.[308]

On January 26, Rojas was given a "memorialized coaching document" by support manager Amy Ruiz. Rojas testified he had never received such a discipline in his time working for Respondent and was unfamiliar with it until he received one on January 26. The document listed several instances of tardiness throughout January, and one instance where Rojas failed the COVID coach upon his arrival to work. The document also mentioned that Rojas was issued a final written warning on March 17 for unprofessional comments and disrespectful behavior to a barista.

On March 4, Rojas was pulled off the floor by the new store manager, Alexander Roux, and operations manager Brittany Sanders. Rojas was presented with a notice of separation. The notice of separation referenced one instance of tardiness on March 2.[309] Rojas pleaded with Roux, explaining that he had two jobs and had been trying for two years to get a transfer to Elmwood, which was closer to his home. Roux replied that Rojas had been given the option of a demotion in order to facil-

[301] GC Exh. 57.
[302] GC Exh. 58.
[303] GC Exh. 163(a)-(b).
[304] GC Exh. 163(b) at 7-18.
[305] Id at 18-28.
[306] Id. at 41-43.
[307] Rojas was a credible witness, albeit combative at times. (Tr. 2086-2087).
[308] GC Exh. 152.
[309] Rojas admitted that he did not communicate with his manager that he would be late, even though he was the opening shift supervisor and arrived 26 minutes late and just 4 minutes before the store was scheduled to open. As a result, baristas waited for him to arrive with the key. (GC Exhs. 153(a)-(b) and 154; Tr. 2105-2106, 2116-2117, 2142-2143.)

itate a transfer to Elmwood, which Rojas declined. Rojas denied that assertion.[310]

8. James Skretta

Skretta worked for the Respondent as a barista from April 2021 to March. He started at the Orchard Park store and transferred to Sheridan & Bailey in September. In addition to advocacy for the Union, Skretta did not shy away from telling support managers Roux and Ruiz to stop misinforming employees about the Union. Ruiz and Roux both replied that they would continue speaking to employees about the Union.

On January 18, Skretta was scheduled to work, but the store was closed that day due to a snowstorm. On January 19, the store opened several hours late because Buffalo's roadways needed to be cleared of snow. That morning, Skretta went to take the trash out the back, but the door was blocked by a pile of snow. Skretta slammed a hand against the door in frustration and called whoever was in charge of the snow removal, "fucking idiots." Ruiz was sitting 10-15 feet away. She did not reprimand Skretta at the time.

Prior to January 18, Skretta and other Sheridan & Bailey employees cursed and used profane language without repercussions. On February 18, however, Roux and Ruiz presented Skretta with a final written warning for foul language, and hitting and slamming the door. Skretta admitted engaging in such conduct.[311]

8. Kaitlyn Baganski

As previously explained, Baganski was hired as a barista in January. As previously mentioned, Mkrtumyan knew from speaking with Cochran in November that Baganski was his girlfriend. On January 11, Baganski reported to East Robinson for four days of training. On or about January 14, support manager Adrien Hernandez told Baganski there would likely be a delay with her transition to Sheridan & Bailey.

The following day, store manager Lukeitta Clark told Baganski that her transfer to Sheridan & Bailey would be delayed because NFB store employees had been placed at Sheridan & Bailey. Baganski asked if other new employees who started the same day would also be delayed. Clark said she would need to look into that. Baganski would later learn that one of the other employees who also started training at East Robinson on January 11 had been working there since January 28.

Baganski remained at East Robinson from January 14 until February 13. From January 14 to February 6, she remained on the training schedule, but received no additional training. Instead, she was an extra person on the floor. Since she was still classified as a trainee, Baganski was not eligible to collect tips during this time. On January 30, Baganski began wearing a union pin at work. From February 7 to 13, Baganski still worked at East Robinson but was scheduled as regular coverage and, thus, became eligible for tips. On February 14, Baganski was finally scheduled at Sheridan & Bailey.

K. Transit & French

1. Union Activity

Angel Krempa, a shift supervisor, led the campaign organizing activities at the Transit & French store. In late August, Krempa began soliciting support for the Union, answering questions, and collecting authorization cards. Krempa also wore two prounion pins during the campaign. Edwin Park served briefly on the organizing committee. Nicole Norton, a barista and barista trainer, is a union supporter who learned about the organizing campaign when the Elmwood store filed its petition. She wore prounion pins to work and talked about unionizing with coworkers.

On November 10, the Union filed a petition to represent Transit & French employees. On December 3, Krempa testified on behalf of the Union in the representation case hearing regarding the scope of the store's bargaining unit. Krempa also participated in bargaining at the Elmwood and Genesee Street stores after they were certified in December. Around late February, Krempa wore a pin expressing solidarity with the Memphis Seven, a group of baristas in Memphis who had been terminated.

A representation election was held on March 9. The Union prevailed. On March 17, the Union was certified as the exclusive bargaining representative of Transit & French's baristas and shift supervisors.

2. Visits from Corporate Officials

After the campaign began, Williams, Pusatier, and other high level company officials visited the store about once a week. Also, from September to the early spring, Melanie Joy, a partner resource manager, periodically visited and asked where she could help out. She assisted baristas by making drinks, cleaning, organizing the back room, and throwing out the trash. Joy's last visits lasted until shortly before the election. During her last visit to the store, she left a note to store employees thanking them for having her. Joy informed them that she was not going to stick around because employees had been feeling uncomfortable with the level of corporate presence, "feeling watched a little bit."[312]

3. Support Managers

Prior to August, employees often worked without the store manager, Nick Tollar, present. Whenever Tollar was in the

[310] The Respondent contends that Rojas's discipline was consistent with Roux's disciplinary practices in Pennsylvania. (GC Ex. 154; Tr. 3052-53, 3064), as well as his discipline of another Buffalo employee, Khadijah Khan. (Tr. 3058-59). The Respondent also refers to the fact that Case did not discipline him to crude remarks he made to her. (Tr. 3354-3356.). Regardless of Roux's practices elsewhere or the Respondent's practices after the campaign began, the credible evidence throughout the record established that prior to August 23, Buffalo-area employees were not usually disciplined for occasional tardiness. (Tr. 871-72, 1048-49, 1257-58, 2125-2126, 2468.)

[311] Roux credibly testified that Skretta's discipline was consistent with his practices in Pennsylvania, but the Respondent did not dispute Skretta's credible testimony that cursing was commonplace at Sheridan & Bailey. (Tr. 2481-2483, 2486, 2494-2496, 3059-3060; GC 157, 164(a).)

[312] Jameson-Blowers credible recollection of the note was undisputed. (Tr. 1265-1267.)

store, he helped out at the expresso bar from 7 a.m. to 9 a.m. The rest of the time, he worked on his computer. After the campaign started. Tollar spent almost all of his time on the computer. He left the company in mid-October. In November, Melissa Garcia became the store manager.

Three support managers were sent to Transit & French. Jack Morton arrived in early September. He stayed until December. Tiffany Mann arrived a few weeks later. She stayed until February. Taylor Alvarez arrived in October or November. Other support managers also came to the store several times a week. The support managers told employees they were there to support the store manager. After the support managers arrived, a manager was almost always present in the store. They helped out on the floor, trained the store manager, and did administrative tasks.

Prior to August 23, the store's 3-4 headsets were worn by drive-through, person working on hot bar and cold bar, and occasionally, the person working customer support. Tollar only wore one when helping out on the line during peak or working the drive-through. When the support managers arrived, the store was supplied with 8-9 headsets. The support managers wore them nearly all of the time, even when they were not working the floor. However, the managers limited the use of headsets to the employee taking orders and the employee making drinks.

4. Changes to Store Operations

a. Staffing and Hours

Transit & French typically needed three or four employees to open, and eight to ten for a full shift. Fully-staffed evening shifts consisted of three to six employees. If there were too many employees on a shift, Krempa would send some home. In September, that changed as the Respondent began overstaffing the store with as many as 14 employees on the morning shift. Krempa was instructed by her store manager and support managers, however, not to send any employees home. If there was no work for any of them, they were assigned cleaning tasks.[313]

Prior to September, employees who wanted to work overtime would ask the manger, who would get approval from the district manager. That changed during the last week in August, when Tollar messaged employees via GroupMe chat [314]offering them the opportunity to work extra hours:

> Hello, everyone!
>
> We can add more labor every day of the week between 8 am and 4 pm. This will all be extra coverage than what is currently scheduled!!
>
> If anyone is willing or able, or looking for some more hours let me know! You can also create the hours you would like, for example: 8-12, or 9-1, or 12-4 etc.
>
> Please direct message me if you are interested![315]

On several occasions in October, there was a shortage of shift managers at Transit & French and the Respondent had to reduce hours on those days. In February, managers informed employees of a change to a "seasonal" schedule. There was no opposition by employees.[316]

b. Solicitations and Promises

In early October, a group of employees complained to Tollar and the ethics and compliance office regarding shift supervisor Jennifer Caravata's behavior. The complaints essentially related to Caravata's statements about Krempa's sexual identity and an incident where Caravata grabbed a minor by the arm. About two weeks later, Krempa was checking in for a listening session when Mkrtumyan approached her and asked if Krempa wanted to discuss the complaint. Krempa replied in the affirmative and they spoke in the parking lot after the meeting. She explained the issues that the employees had with Caravata and why they filed the complaint.[317] The ethics and compliance investigation was concluded shortly thereafter, and Caravata was removed from the store and separated from the company for inappropriate touching of, and comments made to, others in violation of the company's policies against discrimination and harassment.

During the same conversation with Mkrtumyan, Krempa mentioned that, although she had been promoted to shift supervisor seven months earlier, she had not been fully trained because she got COVID. Krempa explained that she made repeated requests to her store manager to be allowed to do so. Shortly after that conversation, Krempa received additional training.

c. Renovations

In September, the Respondent renovated Transit & French. Bar layouts and shelving were rearranged and a freezer was removed. Sometime around December, Mkrtumyan showed several store employees plan drawings for renovations to take place in March. In December, Mkrtumyan promised Transit & French employees that the Respondent was going to expand the size of the store.[318]

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[313] Krempa did not refute the testimony of support manager Jack Morton and Schieda that there was always something to clean in the store. (Tr. 991-993.)

[314] GroupMe participants include employees and managers. It's a messaging database that is not supported by the Respondent. (Tr. 1620-1622.)

[315] Tollar's message, which Edwin Park produced after cropping-out extraneous portions at the top of his phone screen, is corroborated by his message to Tollar on September 4. In that exchange, Park requested more "OT" and Tollar replied, in part, "Yes, take all the coverage you like." (GC-124, 129; Tr. 1620-1634).

[316] This discussion came up at a February staff meeting. (Tr. 986-987; GC Exh. 60(b).)

[317] In it undisputed that the group complaint was filed with ethics and compliance on behalf of Krempa and others by a coworker, Taylor Jovanovski. It is not clear, however, if the complaints made to Tollar and the ethics and compliance department were made on the same or different dates. (Tr. 966-972, 1057-1058, 2785.)

[318] I based this finding on the credible testimony of Jameson-Blowers (Tr. 1260-1261.) In response to leading questions, Mkrtumyan

d. Stricter Rules Enforcement

(1) Time and Attendance

Prior to August 23, employees usually notified coworkers that they were running late or calling out by messaging the group chat, calling or messaging the shift supervisor on duty, or calling the store.[319] After August 23, employees were required to call the store phone if the store was open. If not, they were to call the manager.

Prior to the campaign, the time and attendance policy was not strictly enforced. After Mann arrived, the time and attendance policy was strictly enforced. Jameson-Blowers occasionally arrived late to work, but was never disciplined by Tollar. During a store meeting on February 27, Mann again reviewed the attendance and punctuality policy.[320] After that meeting, Jameson-Blowers was disciplined for tardiness.

(2) Dress Code

Prior to August 23, Tollar routinely allowed Transit & French employees to work while out of compliance with the dress code policy. After Mann arrived, the dress code was strictly enforced. Krempa always tied her apron in the front in order to avoid tripping on the long strings. Tollar never told Krempa that she was wearing the apron incorrectly. In November, Mann told Krempa that she was in violation of the dress code because the apron was not tied around the back. Krempa acquiesced and began to tie her apron in the back instead. (Tr. 994, 1001-1002).

Prior to August 23. Tollar assured Krempa that there was no problem with her wearing multiple non-Starbucks issued pins or multiple facial piercings. On February 17, Mann told Krempa that her multiple non-Starbucks pins violated the dress code policy. Krempa replied that the company was not supposed to be changing the enforcement of rules during the store's union drive. Mann did not relent and issued Krempa a documented coaching.[321]

On a date in late February, Krempa handed out about a dozen of the "Memphis 7" pins to coworkers. The pins referred to a group of prounion employees in Memphis discharged by the Respondent. A federal district court has since ordered their interim reinstatement during the pendency of the agency's proceeding stemming from their discharge. Later that day in the back room of the store, newly-promoted assistant store manager Alyssa Schieda told Krempa that she saw her with the pins and asked if Krempa was the one who handed them out to coworkers. Krempa confirmed that she handed out the pins and asked Scheida if she wanted one. Scheida said okay and Krempa handed her a pin.[322]

Prior to August 23, employees also regularly chatted about nonwork topics while working with headsets. Support managers, however, would interrupt those conversations and tell the employees to focus on their work. Those admonitions dampened nonwork-related communications between employees.[323]

(3) Foul Language

Prior to the campaign, employees, including Tollar regularly used foul language, except when in front of customers. If that happened, Tollar would rebuke the employee, but would not document the incident. After he left, employees were formally counseled if they used foul language. After Tollar left, the support managers strictly coached employees if they swore.[324]

5. Listening Sessions

a. Mid-September

The Respondent held an employee meeting at the store in mid-September. The store closed early for the meeting. About 10 employees attended. Williams, Pusatier, and Cioffi presented the usual explanation as to why they were in Buffalo. They told the employees about the poor conditions they found in Buffalo-area stores, knew that there was union activity there, and wanted to ascertain employees' concerns. The spoke about the Union and took questions and comments from employees. Krempa also voiced her support for, and shared information about, the Union.

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denied promising an expansion to the store, but conceded that she showed employees the plan drawings for an expansion. (Tr. 3433-3434.).

[319] Scheida testified that, prior to August, she would ask employees if they were late and then refer them to the store manager. With respect to the dress code, she would "let them know that that was not acceptable attire and then again, circle my store manager in." (Tr. 2773-2774.) There is no record, however, of any discipline at Transit & French for dress code violations. Moreover, the most recent write-ups for time and attendance violations were issued to Katie Woltz and Jim Kramer in October and November 2019, respectively. (R. Exhs. 233-234.)

[320] GC Exh. 167.

[321] Mann did not dispute Krempa's recollection of their discussion. (Tr. 1004-1008, 1014, 2612-2613.)

[322] I based this finding on Krempa's credible and detailed testimony over Scheida's conclusory denial. (Tr. 1008-1012, 2775.) Moreover, I decline the Respondent's request to reject, as mistaken, the stipulation that Scheida became a Section 2(11) supervisor prior to February 25, and, instead, credit her testimony that she was still a shift supervisor at that point. (Tr. 27, 2770.) In its petition to revoke Request Nos. 23-24 in the General Counsel's Subpoena Duces Tecum No. B-1-1G5W8J5, the Respondent objected to the production of documentation relating to, among other information, Scheida's job title and position, designation on payroll, duties and responsibilities. (R. Exh. 3 at 33.) That objection was resolved and the Respondent did not have to produce those records as a result of the stipulation. (Tr. 28-29.) Under the circumstances, notwithstanding Scheida's testimony, as well as her appearance on the March voter list, it would be inappropriate to strike the stipulation. The personnel-related information objected to by the Respondent would have apprised the General Counsel of Scheida's employment status on February 25. Having resolved that dispute by conceding that she was a statutory supervisor, the Respondent may not now undue a stipulation that was in effect throughout the hearing.

[323] I credited the consistent and detailed testimony of Krempa, Park, and Jameson-Blowers regarding support manager practices over the cursory denials of Morton and Mann that they only wore headsets at certain stations. (Tr. 961, 1619, 1256-1259, 2592-2593, 2807.)

[324] Krempa, Sydney Jameson-Blowers, Nicole Norton, and Edwin Park credibly and consistently testified that employees were never disciplined for cursing until the support managers arrived. (Tr. 998-999, 1259, 1268-1269, 1640-1641, 1746.)

b. Late September-Early October

The Respondent held the second store meeting about 2-3 weeks later at a downtown Buffalo hotel. The store closed early and employees, were scheduled to attend one of the two meetings that day. The meeting was attended by 10-12 employees. Pusatier, Mkrtumyan, and Cioffi. Cioffi led a PowerPoint presentation focusing on the Union.

c. Late October-Early November

Support manager Jack Morton, Mkrtumyan, and Cioffi held the next employee meeting about 2-3 weeks later.[325] The store closed about an hour early for the meeting, which was attended by 8-12 store employees. The baristas were given sheets of paper to fill out areas where they were strong, weak, and wanted to develop. The company officials also explained why it wanted employees to vote against representation.

d. December 15

Cioffi, Joy, and Mkrtumyan held afternoon and evening listening session at the Transit & French store on December 15, 2021. Once again, the store closed early. The meetings was put on the store schedule, employees were assigned to one of the sessions, and the store closed around 3 p.m.. Nicole Norton attended the night session that lasted about one and one-half to two hours. About 10 employees attended the evening meeting. The Respondent's presentation included their rationale as to why employees did not need a union. After a shift supervisor concurred with those remarks, Morton expressed her disagreement. She asserted that the Respondent's actions were unfair and the employees felt pressured by them coming to the store. She added that if employees decided not to unionize, they would leave right away.[326]

e. February 17

On February 17, the Respondent held the first of its kind—a meeting for shift supervisors at Transit & French. Shift supervisors had requested such a meeting in the past, but Tollar rejected the idea due to the labor shortage. Mkrtumyan started the meeting, while Mann came at the midpoint. Most shift supervisors were present, including Krempa, Minwoo Park, and Scheida. Krempa recorded the meeting.[327]

In addition to further soliciting grievances, the managers updated the shift supervisors about the remodeling of the store and changing of store hours. They also reinforced the Respondent's key points from previous meetings about the Union and the election. They included the ramifications of union representation, including impediments to transferring between stores.[328]

6. Angel Krempa

a. Haphazard Shifts

Krempa worked for the Respondent at the Transit & French store from February 2020 until she was terminated on April 1. She progressed through the ranks as a barista, barista trainer, and shift supervisor. At the outset, Krempa worked about 25 hours per week. After graduating from college, she increased her hours to about 35-40 per week.

Prior to August 23, Krempa mostly worked the morning shift. Even though Krempa had been late on occasion, she had never been disciplined for tardiness. After support managers began writing the schedules, Krempa became more unpredictable, with more midday or night shifts. She would be assigned to work opening, midday, and closing shifts all in the same week.[329]

b. Profane Language

On November 23, Krempa was the shift supervisor for the night shift. At the outset, a barista informed her that—although the employee was seven hours into an eight-hour shift and the schedule indicated that the barista had taken a break—the employee never got the break. Krempa replied, "are you fucking kidding me?" and ordered the employee to take a break. Mann pulled Krempa into the back room and reprimanded her for swearing, but did not tell Krempa any further discipline would be forthcoming. On December 7, Mann pulled Krempa aside and Mkrtumyan issued her a final written warning.[330]

c. Dress Code

On February 16, Mann told Krempa to remove all but one of multiple non-Starbucks pins from her apron. Krempa raised her voice, disregarded Mann, and continued to wear 4-6 pins. Krempa also continued to wear several unapproved company

[325] Krempa did not recall specific dates for the meetings she attended. It is not disputed, however, that the store closed early for these meetings and employees were scheduled to attend them. (Tr. 975-977.)

[326] Norton and Krempa both credibly testified about attending one of the meetings that day. Norton also testified that she believed the meetings were mandatory because they were placed "on our schedule like a shift would be, and those are mandatory to go to, unless you're sick." (Tr. 977-978, 1737-1752.)

[327] GC Exh. 60(a)-(b).

[328] Although the Respondent's statements during this meeting amounted to cumulate evidence, I admitted the recording because Krempa, an alleged discriminatee, made statements in this meeting that were relevant to the adverse action subsequently taken against her. (Tr. 978-985.)

[329] The Respondent did not dispute the adverse impact the chaotic schedule had on Krempa. (Tr. 946-953).

[330] Mann's explanation for issuing Krempa a final written warning—with a "Date Created: 11/23/2021"—was neither credible nor supported by the record of the Respondent's disciplinary practices prior to August 23. (GC Exh. 61; R. Exh. 92.) Mann testified that she "memorialized" the incident and got a "consult" the same day, "especially being new to this market, to understand what consistency looked like and what level of corrective action had been used previously just to maintain that we were being consistent." She then consulted with Filc and waited two weeks after the incident—and four days after Krempa testified in the representational hearing—to issue the discipline. (Tr. 2608-2611.) Filc, however, alluding to the fact that "there were unionizing efforts within Buffalo," explained that the only consistency in the Buffalo market was that "[t]here were standards not in place" in Buffalo. (Tr. 2937-2940.) In any event, the issuance of a final written warning based on one cursing incident was not consistent with the Respondent's practice prior to the campaign. (Tr. 2611).

pins (pronoun, suicide awareness, and Memphis Seven) during shifts on February 21, 22, 24 and 25.

On February 25, Mann and store manager Melissa Garcia issued Krempa a memorialized coaching for her violation of the dress code—multiple non-company pins—and the respectful communications policy. Krempa was reminded that she was on a final written warning and that further policy violations would "lead to further corrective action including separation." Krempa removed her pronoun pin and moved her suicide prevention pin to her shirt underneath her apron.[331]

On March 13, Krempa, went to the back room and removed her mask to get a drink of water. Garcia noticed that Krempa had multiple facial piercings, which had been covered by the mask. She asked Krempa to remove one of the piercings. Having had her facial piercings previously approved by Tollar, Krempa refused. Garcia left for the day. However, she returned a few hours later and sent Krempa home. At the time, Krempa still had had five hours left in her shift.

On March 15, Garcia and support manager Duston Taylor briefly met with Krempa. Krempa recorded the conversation.[332] Garcia reminded Krempa:

> [W]e talked about the dress code, we talked about facial piercings. We have all the partners two weeks and . . . [on Sunday] I asked you to take it out and you literally, like, told me no. That insubordinate . . . so I'm gonna have to ask you to go home for the day.[333]

On March 16, Taylor approached Krempa, who was wearing a mask, and asked, "So I just have to know if you're okay with working with one piercing, or if not, you won't be allowed to work." Krempa replied, "I've taken the precautions in order to protect my employment." Taylor repeated his question and Krempa repeated her answer.[334]

d. Termination

On April 1, Mkrtumyan and Garcia pulled Krempa into a meeting. Krempa recorded the discussion.[335] After Mkrtumyan stated that Krempa had been issued a final written warning on February 7, Krempa invoked her right to have a witness present. Mkrtumyan replied that Krempa was not entitled to a witness because it was not an investigatory meeting, but allowed her to get one anyway. Krempa got Nicole Norton to sit in. When the meeting resumed, Mkrtumyan handed Krempa a termination notice, which stated, in pertinent part:

> On March 7, 2022, Angel was scheduled for a shift at 5:30 a.m. and arrived at 5:47 a.m., 17 minutes late. In addition, Angel violated Starbucks policy by failing to call the store to notify the store manager that she would be running late. Instead, Angel sent a text message stating, "LMAO my car is dead again." I will try my hardest to be there on time. I'm going to be late. I'm sorry."
>
> On March 20, 2022,[336] Angel was late again. She was scheduled at 3:30 p.m. and she arrived at 3:50 p.m., 20 minutes late.
>
> Angel was well aware that she required to call the store to report her lateness. On February 1, 2022, the [store manager] clarified the Attendance and Punctuality policy, reminding partner that they need to call the store when late as the shift supervisors do not always have their phones on when running the floor. This reminder included clarification that texting is not sufficient for communicating tardiness.
>
> On February 27, 2022 during a team meeting, the [store manager] again reviewed with the team Starbucks Attendance and Punctuality policy.
>
> Angel is currently on a Final Written Warning from December 7, 2021 and was recently reminded on February 25, 2022 that any further violation of Starbucks policy would result in separation. Due to the corrective action history and the recent policy violations, Starbucks is separating employment with Angel effective immediately.[337]

Krempa admitted she was late on both occasions, but told Mkrtumyan that she also called the shift supervisor (Jameson-Blowers) on March 7 and the store on March 20 to let them know she would be late. She offered to show Mkrtumyan the phone logs to confirm the calls on both occasions. Had Mkrtumyan been receptive, she would have seen that Krempa: (1) called Jameson-Blowers on March 7 at 5:19 a.m. and spoke with her for 46 seconds; and (2) called the store on March 21 at 3:29 p.m. Mkrtumyan, simply replied that Krempa could write a statement on the form, which she did.[338]

Although the Union was the certified, exclusive collective-bargaining representative of Transit & French baristas and shift supervisors as of April 1, the Respondent neither bargained with the Union over Krempa's termination, nor informed it of its plan to terminate her prior to doing so.

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[331] Krempa did not dispute the allegations, but attributed her disrespectful behavior to being overwhelmed at work at the time. (GC Exh. 63; Tr. 1015-1021.) She also testified that she was aware of and understood the policies but believed that she would not be disciplined "due to the union drive." (Tr. 1050.)

[332] It is undisputed that Krempa lost five hours of work on March 15. (GC Exh. 64(a)-(b); Tr. 1028.)

[333] GC Exh. 64(b) at 3.

[334] There is no evidence that Taylor observed any facial piercings on Krempa, who was wearing a mask at the time. (GC Exh. 65(a)-(b); Tr. 1029.)

[335] GC Exh. 66(a)-(b).

[336] The parties concede that the lateness was on March 21, not March 20.

[337] It is undisputed that no supervisor or manager spoke to Krempa about either lateness prior to being terminated. (Tr. 1035-1036, 1041-1043, 1046-47, 2657-2662; GC Exh. 67.)

[338] In addition to phone logs, Krempa's credible testimony relating to her tardiness on March 7 were also corroborated by Sydney Jameson-Blowers and Nicole Norton, respectively. Although Norton was a barista, she passed along Krempa's message to Mariah, the shift supervisor. (Tr. 1040-1043, 1262-63, 1748-1749; GC Exhs. 66(b) at 7-9, and 70-73, and 101.)

7. Edwin Park

Edwin Park began his employment with the Respondent as a barista at the Elmwood store on April 2019. He was promoted to shift supervisor and transferred to Transit & French in April 2021. Park typically worked morning shifts of either 5:00 a.m. to 1:00 p.m., occasionally 7:00 a.m. to 3:00 p.m., or, rarely, 9:00 a.m. to 5:00 p.m. Park took a leave of absence in early January. When he returned on January 21, he was scheduled for mostly closing shifts, with some opening or midday shifts mixed in.

Park was an open union supporter, signed the Dear Kevin letter, wore a prounion pin at work, and expressed support for the Union to coworkers at Transit & French. He also informed Garcia that he supported the Union when she became store manager in November.

Prior to the campaign, Park used foul language at work and was a sloppy dresser. Alyssa Scheida, a shift supervisor prior to the campaign, would report those incidents to Tollar. Tollar, however, never disciplined Park for that behavior. Those habits continued after the campaign.[339]

On December 3, he was pulled off the floor by Mann and Jack Morton and issued a final written warning for swearing on November 9 and swearing and disrespectful behavior toward a coworker on November 15. Park admitted engaging in the behavior. He wrote a note, however, stating that Morton spoke to him on November 9 about the incident being stressful, but not the vulgarity.[340]

On December 9, Park was issued a documented coaching for a dress code violation for wearing sweatpants on November 24, cursing over the headset on November 26, and arriving 30 minutes late for the opening shift on November 29. Regarding the dress code, Mann told Park that they looked comfortable, but did not comply with the dress code. She did not send him home. On November 26, Park was working at the drive-through, and cursed in a joking manner over his headset. At the time, there were no customers in the drive-through or café. However, Mann, in the back room wearing a headset, said, "language."[341]

On March 21, Mkrtumyan and Garcia met with Park and presented him with a notice of separation.[342] The notice, which Mkrtumyan read to Park, referenced three incidents: arriving seven minutes late to work on February 28 and 10 minutes late on March 5; and sticking his finger in a drink on February 25. Park admitted all three incidents, but explained each one. On February 28, he called the store, as required, and arrived late after helping to dig out a car that was blocking his route to work. When he arrived at work, he, Scheida, Garcia, and Mann all talked and laughed about the incident. Regarding his late arrival on March 5, Park tried to call the store that day but was unable to get through. Finally, Park explained that he was working the closing shift at the Orchard Park store on February 25 when two coworkers approached him with a drink—one of them was a new employee—and asked him the difference between a wet and dry cappuccino. Park, thinking the drink was a practice drink, jokingly dipped his finger into it and said it seemed to be dry enough. They told him, however, that the drink had been made for a customer. Park had the drink thrown away and another one made.[343]

As with Angel Krempa, at the time Park was terminated the Union was the exclusive collective-bargaining representative for Transit & French employees. Again, the Respondent did not bargain with the Union over its decision to terminate Park, or even inform the Union it planned to do so.

8. Nicole Norton

Prior to the campaign, Norton was never disciplined for cursing in the store. She was working the closing shift one evening in November when she heard a coworker state that someone had made a mess in the public restroom. At the time, there were no customers in the store, which was closed. When Norton saw the condition of the restroom, she stated that "[p]eople are fucking disgusting. How disrespectful, that's so fucking gross."

On December 6, Norton was verbally coached by Mann not to wear sweatpants to work, agreed her pants did not comply with dress code, and had another discussion where the support manager told her that other pants she wore were okay. However, neither Mann nor Taylor Alviar, the support manager present when Norton cursed in November, discussed that incident with her prior to January 2.[344]

During the December 15 meeting, with Mkrtumyan, Cioffi, and Melanie Joy present, Norton was very outspoken about her support for the union. She told the corporate officials that they were engaged in union busting. Norton asserted that employees

[339] Scheida, promoted to assistant store manager in early 2022, testified that Park was usually sloppily dressed and used inappropriate language. She also reported those infractions to Tollar. (Tr. 2774-2779).

[340] Morton did not dispute Park's statement about the subject of their discussion on November 9. I also did not credit his testimony denying that he knew Park—a signatory to the Dear Kevin letter—was an active Union supporter. (GC Exh. 125; Tr. 1641-1647, 2614-2617, 2810-2811, 3451-3452.)

[341] Mann did not dispute Park's testimony regarding the circumstances of the three incidents. (Tr. 2940-2942; GC Exh. 126.)

[342] GC Exh. 127.

[343] Garcia discussed the February 25 incident with Park on February 10. She documented what the other two employees shared with Orchard Park's store manager about the incident. Their version of the incident was similar to Park's explanation. In addition, they reported that Park made them feel uncomfortable when he told them that he was on a final written warning, had to watch everything he said, and the company was cutting jobs. (R. Exh. 302.) However, the Respondent did not dispute Park's credible explanations for the three incidents. (Tr. 1648-1656, 2770, 3452-53, GC Exh. 128.)

[344] Communications between Mann, Alviar, and partner resources did not establish that the Respondent intended to discipline Norton for a cursing incident in November. Contrary to the November 23 date on the disciplinary form issued to Norton on January 2, the internal communications only mentioned her wearing "the same sweatpants" on December 6 and pushing back on December 7 about cleaning the restrooms and "swearing, using the f-word."

felt pressured to come to the meetings and opined that many employees would leave if they did not unionize. Sometime after the meeting, Norton was reprimanded by support manager Mann for wearing pants out of dress code.

At the end of December, Norton informed Mann that she wanted to transfer to another store to save on gas money. On January 2, Mann issued Norton a written warning for the November cursing incident. As she handed Norton the discipline, Mann said that she had been doing well. After receiving the write up, Norton learned that employees are not allowed to transfer stores for six months after receiving a written discipline. (GC Ex. 132; Tr. 1741-1748, 1751-1752).[345]

L. Delaware & Chippewa

1. Union Activity

On February 1, The Union filed a representation petition to for Delaware & Chippewa store employees. The Union prevailed in the election on April 7 and was certified as the bargaining representative of the store's hourly employees on April 15.

Iliana Gomez, a shift supervisor, has worked at Delaware & Chippewa for 10 years.[346] She took the lead at her store by contacting the Elmwood store organizing committee in September or October for information on how to organize her store. Gomez signed a letter in February stating that Delaware & Chippewa's hourly employees intended to organize. She became a member of the organizing committee and wore a prounion pin at work.

2. The Respondent's Response

a. Visits by Corporate Officials

During the previous 10 years, the highest level corporate official to visit Delaware & Chippewa was LeFrois or his predecessor. They visited about five times during that period. Beginning in September, Williams, Murphy, LeFrois, and other corporate officials visited the store. Initially, there were about four or five of them were in the store each morning.

b. Staffing and Hours

Prior to the campaign, Delaware & Chippewa was staffed by 15-20 employees. In September, employees assigned additional work hours. Hunt told Roisin Doherty, who had transferred from the Galleria kiosk, that employees hours had been increased across the district. By late October/early November, however, the Respondent began reducing employee hours and scheduling less employees. When Garcia asked Hunt about the changes, he told her that the hours and staffing were never meant to stay at the increased levels.

Prior to the campaign, Delaware & Chippewa was adequately staffed. After the campaign began, however, staffing increased significantly. By November, about 34 employees were stationed there. At times, there were so many employees in the store that Gomez did not any have work to assign some of them. Doherty encountered new arrivals from the centralized training stores that were unprepared to work in the store, except at the cash register, and had to be retrained on the job. Rather than send some of them home as she normally would have done, Gomez had to find something for them to do.

In October, Hunt told Gomez and the other shift supervisors that they needed to revise their scheduling availability to be available for at least one weekend shift. In her years as a shift supervisor, she worked 25-35 hours per week, Monday to Friday, with weekends off. Gomez pushed back, arguing that she could not comply with the new minimum. While she did not adjust her availability to comply with the new minimum requirement, Gomez was never disciplined as a result. Hunt reiterated the new policy in late November or early December, when he told Doherty that he enforced the requirement at his discretion. He did so again at the end of January when he told Doherty that the Respondent's new policy required a minimum 3-4 day availability each week in order to avoid termination. This change essentially required employees to work one weekday shift, one weekend shift, and one evening shift.[347]

c. Granting Benefits

Over the course of Gomez's 10 years with the Respondent, she received performance-based raises. When she received her yearly pay increase in October, Gomez complained to Hunt that the amount did not reflect the value of her services. She told him that she deserved a higher pay increase because her responsibilities had increased significantly with the addition of so many new employees. Hunt told Gomez to talk to Mkrtumyan about it, which she did. Mkrtumyan told Gomez that everything would be rectified with the coming seniority-based wage increase.

d. Renovations

Delaware & Chippewa closed for one month in February 2019 and the entire store was renovated. In January, the store closed for a minor renovation and deep cleaning. When employees returned, they found that one wall had been removed and replaced by another wall.

3. Support Managers

a. Constant Presence

Gavin Crawford was the first support manager assigned to Delaware & Chippewa. He arrived in September, stayed several months, and was replaced by Heather Dow. On one occasion, Crawford told Garcia in the back room that he was there to make the store's employees feel special because the compa-

[345] Norton credibly testified that she worked around November 23, but not on that date. However, she conceded the accuracy of the allegations. Mann, on the other hand, provided no details about the confusing chronology of events between November and January 2. (GC Exh. 132; R. Exh. 306; Tr. 1738-1752.)

[346] Gomez is currently on a "coffee break" sabbatical from February 2022 to February 2023. (Tr. 1678-1679).

[347] Mkrtumyan testified that she was unaware of any minimum availability requirement, while Dow only recalled evenly distributing hours among employees if someone left. (Tr. 3075, 3459.) Accordingly, I based these findings on credible and undisputed testimony by Gomez and Doherty. (Tr. 1318-1323, 1695-1697.)

ny had not given them the attention they deserved. At the outset, Crawford worked the morning shift along with Hunt. Hunt usually worked off the floor, while Crawford assisted in handing out drinks and greeting guests. Several weeks later, Crawford began working the afternoon shift, ensuring that a manager was present during all operating hours.

Dow operated more like the store manager, critiquing the way shifts were being run and how the store was laid out. On February 8, Dow mentioned that she had been in a union and employees did not know what they getting into. She cited the example of employees in one of the Respondent's Canadian stores union that unionized and had not received pay increases given to employees in all of the other Canadian stores.[348]

b. Ordering Beverages and Meals

Several policies were enforced during the level reset by Murphy and Hunt. One policy that was not usually followed at Delaware & Chippewa prior to September was the requirement that employees get on the customer line if they wanted to purchase a beverage or food during breaks. Delaware & Chippewa employees typically bypassed the line during breaks and completed their own orders. During the level reset, Murphy and Hunt told employees that they needed to order meals and drinks online and wait for another employee to complete the order.[349]

c. Dress Code and Jewelry Policy

Prior to the campaign, the dress code and jewelry policy were not strictly followed at Delaware & Chippewa. On November 1, Hunt did a level set with the store's employees regarding the dress code. Gomez, who had used certain shoes to work, was subsequently told by Crawford that they did not comply with the dress code. Doherty was told the same thing on November 24, went home and returned an hour later in compliance. Neither employee had been spoken to about their footwear before.

Gomez had worn two facial piercings at work. They were completely covered when she worked on the floor, but were visible when she went in the back room to drink, eat, or take a breather. In the summer of 2021, Gomez asked Hunt if it was an issue whenever she took her mask off. He told her that he did not see a problem because of the way the [Respondent] is moving.

d. Picking Up Shifts

Prior to the campaign, Delaware & Chippewa employees called out by messaging or calling Hunt or another manager. Gomez and other employees also utilized the GroupMe app to request Hunt's approval to pick up shifts at other stores. Hunt typically approved all requests with a "tag." Even after Hunt had employees sign the time and attendance policies in late summer of 2021, these practices continued at Delaware & Chippewa.

The callout and shift swapping practices at Delaware & Chippewa changed in January after Dow told store employees that the use of the chat group for these purposes did not comply with company standards. In accordance with the Partner Guide, she instructed employees to call her directly when calling out.[350] In addition, employees were required to contact the managers at the two stores involved when seeking to swap or have someone pick up their shift. Dow also had every employee sign the time and attendance, dress code, and partner relations policies.

4. Listening Sessions

Mkrtumyan and Murphy held a two-hour meeting at Delaware & Chippewa in late September. The store, which usually closed at 7 p.m., closed for the day at 5 p.m. During this meeting, Mkrtumyan and Murphy solicited grievances about working conditions at the store. The employees responded by sharing concerns about pay and new employee training. Mkrtumyan and Murphy also spoke about the disadvantages of unionization. Gomez pushed back. Explaining that she came from a family of union members and knew a little bit about the process, Gomez opined that management was only presenting the negative aspects of union representation.[351]

5. Roisin Doherty

On December 4, Doherty was issued a documented coaching for arriving late to work on November 2, 12, and 13. It also mentioned Doherty being sent home on November 24 for a dress code violation and returning an hour later in compliance.[352]

On January 1, Hunt issued Doherty a written warning for tardiness on December 4, 10, and 19.[353] After receiving this discipline, Doherty expressed her concern that she would be fired for being a few minutes late. Hunt told Doherty that the company had a five-minute forgiveness window and, as long as she was not more than five minutes late, she would not be disciplined.

From January 10 to February 5, Doherty was tardy by three or four minutes on six occasions, and called off work four times. Doherty was then out for a period of time due to COVID. When she returned, Dow issued her a final written warning for call offs and tardiness. Doherty explained to Dow that Hunt informed her there was a five-minute grace period for lateness. Dow replied that such a policy never existed. In her statement on the form, Doherty noted that she had been "sick for the last two weeks of January and was told not to come in due to Covid coach. I have confirming texts from previous manager."[354]

[348] I based these findings on the credible and detailed testimony of Gomez over Dow's conclusory denial. (Tr. 1701-1702, 3072, 3090.)

[349] Doherty and Rizzo credibly explained that the practice enabled employees to have more time on their breaks and avoid distracting coworkers. (Tr. 740-741, 1347-1348.)

[350] GC Exh. 140 at 32, 43.

[351] I based this finding on Gomez's credible and undisputed testimony. (Tr. 1687-1690.)

[352] GC Exh. 111.

[353] GC Exh. 112.

[354] Dow's testimony was not credible. She spoke generally about Doherty's time and attendance, but neither disputed Doherty's testimony that she disavowed Hunt's 5-minute grace period policy nor did she address the evidence that Doherty called Hunt and he told her to stay home and feel better. (GC Exhs. 109-110; Tr. 1338-1340, 3082-3084.)

M. Monroe Avenue

1. Brian Nuzzo's Union Activities

Brian Nuzzo, a six-year employee with the Respondent, first worked as a barista in New Jersey. In January 2017, he became a barista trainer. In September 2017, Nuzzo transferred to the Clover Commons store in Rochester. In January 2018, Nuzzo was promoted to shift supervisor. He worked primarily opening shifts, five days a week. In August 2021, the store moved to a nearby location at Brighton, Monroe, & Clover (the Monroe Avenue store).

The Respondent's employees in Rochester were well aware of the organizing campaign at stores in and around Buffalo. By December, Monroe Avenue employees, including Nuzzo and Wagstaff, beginning planning to organize their store. Nuzzo, in particular, became one of the lead organizers for the campaign in Rochester. On February 1, Monroe Avenue employees filed a representation petition. That same day, Nuzzo spoke to Raymond Ballard, his store manager, to let him know before the news became public. Nuzzo also posted the store employees' letter of intent to organize on social media and the Union held a press conference. His signature was the first one on that letter to Johnson.[355] After the campaign launched, Nuzzo, Wagstaff and other employees wore prounion pins and shirts at work.

2. Store Practices

a. Entering the Store

In accordance with the Respondent's procedures, two employees are scheduled to arrive at the Monroe Avenue store by 5:00 a.m. and start setting up before the store opens to customer at 5:30 a.m. The keyholder counts the registers, money, milk, and takes temperatures. The other employees makes coffee, tea, and stocks whatever needs to be stocked. On numerous occasions, however, employees, including Nuzzo, entered the store alone to start setting up for various reasons. Nuzzo would enter the store alone if the other opener was late, to use the restroom, or to get out of the cold weather. As Mkrtumyan would later demonstrate, store opening information was always available to district managers, as well as store managers. In such instances, however, store employees were never reprimanded, much less disciplined, for violating the Respondent's store opening procedures.[356]

b. Masks

As of March 4, the Respondent's facial masking policy still required employees to wear masks whenever they were in the store, unless they were eating. There were occasions when Monroe Avenue employees, in front of store managers, did not wear masks in the absence of any customers in the store. Prior to March 4, however, employees were never disciplined for those policy violations. On March 7, the Respondent updated its mask policy to make masks optional for employees.[357]

3. March 4

Nuzzo was scheduled to work an opening shift on Friday, March 4. Fridays were usually Monroe Avenue's busiest day of the week. The previous night, Nuzzo learned that one person would be calling off for that morning. When he woke up on March 4, Nuzzo saw messages from two other people calling out. He decided to go to the store early and call Ballard about an opening plan. Nuzzo arrived at the store at 4:48 a.m. and clocked in at 4:56 a.m. The next person to arrive clocked in at 5:00 a.m.

Nuzzo looked at the daily coverage report and called Ballard several times. Nuzzo also called at least one other barista to get the minimum coverage needed to open to customers.[358] Nuzzo finally spoke to Ballard at 5:25 a.m. Ballard instructed him to keep the store closed until they came up with a plan, and to work on putting away the Friday delivery. The store ended up opening just the drive-through at about 7:30 a.m. The café remained closed because there were not enough workers to operate the café, drive-thru, and mobile ordering all at once. Nuzzo did not wear a mask while he was alone in the store the morning of March 4. He put his mask on when the store opened to customers.[359]

4. The Investigation

On March 8, Ballard notified Nuzzo that Mkrtumyan wanted to know why the store did not open on time on March 4, why he punched in four minutes before the next person, and whether he had been alone in the building at any point. Ballard asked Nuzzo to email him with an explanation as to what Mkrtumyan "would want to hear."

On March 9, Nuzzo emailed Ballard explaining what happened during the morning of March 4.[360] Nuzzo, who was never previously questioned about entering the store alone, denied entering the store alone. After Ballard forwarded Nuzzo's email to Mkrtumyan, she contacted Nicholas Tobias, a partner resources associate, and they reviewed the store video, confirming Mkrtumyan's suspicion that Nuzzo lied about not opening alone, wearing a mask, and enforcing the mask policy for other employees in the store. Mkrtumyan decided at that point to terminate Nuzzo.[361]

On March 10, Ballard called Nuzzo and said that Mkrtumyan did not believe what Nuzzo wrote in his email. He also told

[355] GC Exh. 117-118.

[356] Michaela Wagstaff, also a shift supervisor, corroborated Nuzzo's credible testimony regarding Monroe Avenue employee practices and the absence of any discipline relating to store opening procedures. (Tr. 1469-1473, 2546.) As Mkrtumyan's testimony established, district manager were apprised of such developments and had access to it. (Tr. 3445-3448.)

[357] Wagstaff also corroborated Nuzzo's credible testimony relating to employee masking practices. (Tr. 1478-1481, 2546.)

[358] GC Exh. 119.

[359] Store video showed Nuzzo enter the store at 4:48 a.m. (Tr. 1465-1480).

[360] Nuzzo admitted that he lied because he "panicked because I thought - - I didn't believe I did anything wrong at that point." (R. Exh. 288, 1481-1485.)

[361] Considering Mkrtumyan's practices over the previous six months of strictly enforcing the Respondent's policies, I find that she made the decision on her own. (R. Exh. 133; Tr. 3445-3451.)

Nuzzo that Mkrtumyan was going to be reviewing the store's video. Nuzzo asked Ballard to let Mkrtumyan know he was sorry and panicked. He asked if he could speak to her directly. A few days later, Ballard told Nuzzo that he passed his message along, but that Mkrtumyan initiated the disciplinary process. Over the next week, Ballard told Nuzzo that he recommended that he be issued a written warning and would update him about any developments, but the decision was out of his hands.[362]

On March 21, Marcus Rainford, an acting district manager, and Ballard sat at a table with Nuzzo after his shift ended.[363] Rainford then told Nuzzo he was being separated from the company and presented him with a notice of separation. He also told Nuzzo that he cared about him and wanted to help him along the next steps in his journey. Nuzzo tried to explain and complained that he was not given any warning, but Rainford said it was too late, and the decision had been made. Rainford also explained that Ballard had advocated on Nuzzo's behalf, but his opinion ultimately did not matter.

Nuzzo rejected Rainford's continued expression of concern as "fucking bullshit," and remarked that the store's employees hated him. He vented his concerns about making his mortgage and car payments, the loss of medical insurance, and the need to cancel prescriptions and medical appointments. After Rainford alluded to post-employment medical insurance, Nuzzo replied that he had "fucking COBRA" and "insurance through this fucking job, you idiot." Rainford then offered to escort Nuzzo to the back room to get his personal belongings. Nuzzo replied by asking if Rainford thought he was a "fucking criminal that I'm going to fucking steal from this place?" While in the back room, Nuzzo shoved a pastry cart positioned in front of the lockers out of the way so he could get his belongings. Before he walked out of the store, Wagstaff hugged him. After picking up his belongings, Nuzzo remarked to Rainford as he walked out the front, to "kiss my ass" and "hope you die."[364]

On March 22, Nuzzo returned to the store and was speaking to a coworker regarding his termination. Rainford, who was in the store at the time, approached Nuzzo and told him he needed to leave the store. Rainford said that their interaction the previous day made him feel unsafe and uncomfortable, and he was going to call law enforcement if Nuzzo did not leave. Nuzzo told Rainford he thought that was crazy, but agreed to leave. He also mentioned that he meant everything he said the previous day about Rainford being disliked by the employees.

Before he was terminated, Nuzzo would go to the Monroe Avenue store on his days off to get coffee and socialize in the café. On March 27, albeit terminated, Nuzzo continued his morning routine by going to Monroe Avenue and ordering a coffee. As he waited in the handoff area, Nuzzo saw Rainford enter the store. Rainford walked directly to Nuzzo and told him that he had been barred from the Respondent's stores. Nuzzo asked for an explanation, but Rainford replied that if Nuzzo did not leave he was going to call law enforcement. Nuzzo explained that he already paid for his coffee and just waiting for it. Rainford offered to give him a refund, but by that time the drink had been served. Nuzzo asked if they could sit and talk. Rainford agreed. Nuzzo then apologized for his behavior on March 21 but requested answers. Rainford said it was too late to rescind the ban. Contradicting his statements from March 21, Rainford also told Nuzzo that it was Ballard's decision to terminate him.

Later that day, Rainford text messaged Nuzzo a copy of the notice barring him from the Respondent's stores. The notice listed the grounds for the action: derogatory language toward another employee, vulgar language in the store, and "a]ttempting to damage company property." Nuzzo messaged Rainford requesting more information but Rainford never responded.[365]

N. Williamsville Place

1. Union Activity

The Union filed a representation petition, 3-RC-292127, to represent Williamsville Place store employees on March 14. On May 23, the mailed ballots were counted. The tally of ballots showed that of the approximately 25 eligible voters, 6 cast ballots for the Union and 3 against, with one void ballot and 10 challenged ballots, a determinative number. On December 15, 2022, the Regional Director issued a revised tally, again 6 to 3 in favor of the Union, and certified the Union as the exclusive bargaining representative of the store's hourly employees.

Casey Moore, a member of the organizing committee and operator of the Union's Twitter account, immediately began wearing union pins at work after the campaign went public. She wore two union pins at work and spoke to her coworkers about the organizing campaign.[366]

2. Corporate Officials Visit

The Respondent's corporate representatives visited the store after August 23. The Williams team, along with Coulombe and Mkrtumyan, would come to the store, check for broken equipment, and ask employees about the maintenance and renovation needs of the store, and assist with various store operations.

3. Support Managers

a. Constant Presence

The Williamsville store received two support managers in the fall. They each spent about 40 hours per week in the store.

[362] The Respondent did not refute Nuzzo's credible testimony that his store manager would not have sought his termination for his policy violations. (Tr. 1487-1489.)

[363] At the time, Monroe Avenue had petitioned for election, but Nuzzo had not yet voted. (Tr. 1496.)

[364] Wagstaff observed, but did not hear the entire conversation in the café between Nuzzo and Rainford. She credibly testified, however, that Nuzzo, although upset, did not yell or scream. After Nuzzo left, she went into the back room and did not see anything damaged. (GC Exh. 121; Tr. 1489-1494, 1511, 2544-2545.)

[365] Aside from referring to Nuzzo's derogatory and vulgar language on March 21, the notice indicated that Nuzzo was not banned for damage property, but for "[a]ttempting to damage company property." (GC Exhs. 122-123; Tr. 1496-1505.)

[366] Moore credibly testified that the work environment became "really tense" almost immediately after the campaign launched. (Tr. 1381-1382.)

The first one, Robert Berg, arrived in early October and was there until late December. He was replaced by Kelliegh Hanlon. Berg took over employee scheduling from the store manager, Mark Behrend, worked on bar and drive-through, and supervised the store's operations. In contrast, Behrend would only help by handing off food and beverages to customers.[367] Behrend was there early in the morning and would leave after his eight-hour shift. Employees usually closed the store without a manager present. After September, a manager or support manager was almost always in the store.

b. Headsets

Employees working on the floor and drive-through usually wore headsets. In contrast, Behrend, never wore one.

c. Stricter Rules Enforcement

Berg also strictly enforced rules that were previously overlooked. Previously, employees usually left the milk on the bar during high volume periods since they were quickly used up. In October, Berg instructed employees not to place customer order stickers on the company logo instead of their past practice of placing them anywhere on the cups. Berg also required the milk to be placed back in the refrigerator after each drink was made, even during high volume periods when employees were quicky going through the milk containers or carafes. He also started pulling employees off the floor and telling them how they were violating the dress code and what needed to be changed. In one instance in November, he told Moore that she needed to buy new shoes.

4. Store Renovations

In late October, the Williamsville Place store closed for renovations. At the time, employees were told that it was the first step in the conversion of the store to a drive-through and mobile order-only location. When the employees returned, they received conflicting information as to whether they still needed to be checking out customers in the café. Several employees, including Moore, asked Williams about this one when she visited one afternoon after the renovation. Williams replied that the intention was for the Williamsville Place store to function only as a drive-through and mobile order pickup location and they did not have to checkout customers at the cafe.[368] Subsequently, the permits were not approved and the Respondent was unable to add a drive-through to the store.[369]

5. Listening Sessions

a. September 2

On August 25, Williamsville Place's assistant store manager, Michael Donovan, text messaged employees inviting them to one of the initial meetings at the Main Street store:

Hey y'all! For those of you who don't have my number, this is Michael from Starbucks Williamsville Place. David LeFrois, Shelby (the other District's DM), and the Regional Director are coordinating Listening Sessions with partners to discuss what their experience with the company overall has been. Please reach out to me if you are interested in attending one of these sessions. This is a PAID session, and will be at the Main [Street] store. Thanks so much!

Thursday the 2nd: 2PM – 3:45 PM, 4:15PM – 6PM Friday the 3rd: 8AM – 9:15AM, 9:45AM – 11AM[370]

b. September 22

Moore attended and recorded the evening session on September 22.[371] Peck, Mkrtumyan, Modzel and Filc represented the Respondent. The store, which usually closed at 9 p.m., closed early for the meeting. The session opened with extensive coffee tasting and a recitation of the Respondent's history from Modzel. After introductions, Peck revealed the reasons for the meeting: an update on the company's actions in the market, "feedback" from the employees about their store, and the "Union threat happening in the market."[372]

Modzel provided an update on the Respondent's efforts to address issues raised by employees: 13 new hires in the previous week to address understaffing; reviewing ways to improve the new employee training process; additional facility service managers brought in to "scrub" stores for broken equipment and then fix them; and looking at new ways to eliminate bees and fruit flies. He also urged employees to let the corporate representatives know if there was anything else that needed attention:

> So those are some of the things we're working on. We wanted to bring you up to speed. You're seeing a lot of people probably in and out of your store. It's all to try to understand. When you see somebody, if there's something we haven't solved yet, or you don't tell us tonight, like, just grab them. Because we're all here to help. And if there's something that's going on that we can make it a little better. Like, let's -- let's tell us, so we can get on it.[373]

Modzel concluded by referring employees to a poster in the back of the store, called "Make the Right Call," that employees should call if they're not getting the support they need. An employee, Brittany Kistler replied that the poster was recently placed there. Peck replied that "it should've always been back

[367] These findings are based on Moore's credible and undisputed testimony. Mkrtumyan testified that the support manager took over employee scheduling responsibilities for three weeks in November while Behrend was out on sick or family leave, but did not dispute Moore's credible testimony that Berg already took over those responsibilities in September. (Tr. 1432-1433, 3461-3462.)

[368] Moore did not specify who else was present when Williams clarified their confusion regarding the café . (Tr. 1396-1397, 1417-1421.)

[369] Moore credibly testified that the promise to convert the store to a drive-through and mobile pickup store was promised by Mkrtumyan and Murphy. (Tr. 1396-1397, 2739-2741, 3429-3431.)

[370] GC Exh. 74.

[371] GC Exh. 76(a)-(b).

[372] GC Exh. 76(b) at 23-24.

[373] Id. at 25-29.

there.[374] While on that subject, she also implied that LeFrois had been terminated.[375]

Peck then proceeded to solicit feedback from employees about their store. The employees heaped praise on their manager, Behrend, and shared that Williamsville Place was a well-run store. They did, however, have complaints. One employee complained about supply shortages and a breakdown in standards. Peck explained that the Delta variant to COVID-19 exacerbated supply shortages and the company brought in regional operations coaches to support the store managers. Modzel, replying to a complaint about stores being overwhelmed with sudden surges of mobile orders when nearby stores close early, suggested that "[m]aybe we call somebody extra in, or we can – we can prepare ourselves for that. The employees also complained about their cramped, small work space and the underutilized café, which resembled a narrow hallway. Modzel, expressing interest in those issues, asked who had the drawings and schematics of the location.[376] Peck summarized the company's intentions:

> - - and what we're looking at now is, like, what's – what's the greatest need for the store. So you know, what they're looking at is the efficiencies. We prioritize that way, so we have an overall plan. I don't know specifically the timing for the store. I will look it up and find out, but it's really a master plan of where's the greatest need. Williams joined the meeting late, just as Peck transitioned to an update about the Union and the upcoming election.[377]

Williams, arriving late to the meeting, referred to the narrow layout of the store as resembling a bowling alley. She suggested converting it to a drive-through and mobile order pickup only location. Williams told the employees that the design team would present them with designs for their input.[378]

c. September 28

The Respondent held another listening session for Williamsville Place employees on September 28. The store usually stayed open until 9 p.m., but closed at around 5 p.m. for the evening meeting. The meeting was run again by Modzel and partner resources manager Kate Fenton, and lasted about an hour and a half. Most employees attended. Following up on employee complaints about the store's cramped work space at the September 28 meeting, Modzel updated the employees on the Respondent's plan to add a drive-through station to the store, as well renovate the rest of the store.

Fenton, speaking about the bargaining process, explained that a bargaining agreement would be for a number of years and could result in employees losing their ability to transfer to or pick up shifts at other stores. Moore disputed Fenton's representations regarding the effect that a contract would have on existing practices.[379]

d. October 12

Peck, Fenton, and Mallori Coloumbe, a support district manager met with a small group of Williamsville Place employees at a Marriott hotel near the airport. The meeting was recorded by Moore.[380] Fenton provided a PowerPoint presentation of the Union, union membership, union dues, union rules, the election process. She reported that, as of October 12, the Union had filed petitions at five stores, but two were withdrawn. Fenton portrayed a potential contract as an agreement that might take months, year, or even never come to fruition. Moore repeatedly disputed the accuracy of Fenton's representations regarding the effects of union representation.[381]

Coloumbe then provided an update of the Respondent's promised improvements. She reported that the employees' wish for a drive-through only location was their command: it was "coming here very shortly." Fenton also described the "aggressive measures" taken to eliminate the store's bee problem, along with "some resets and some cleaning," and "some things coming with refrigeration" to improve the tight backroom area. Concluding her update, Fenton, asked if there were "[a]ny questions when it comes to some of the things we're doing within the store? Anything we can do better? Or would you like more? I need this done." Peck also wanted to know: "Anything on your mind at all? Anything you wanted to talk about while we're here? Moore had a question, but it was not about the store: "I saw that David LeFrois, like, he seemed to have a lot of problems, but he was also awarded district manager of the year. And I was just curious why he was awarded that position if he was so bad?" Peck replied that "I can't say that he was – he was bad . . . David also has some amazing traits as well."[382]

e. November 15

On November 15, the Respondent held its last listening session for Williamsville Place employees. The store, which usually closed at 9 p.m., closed at about 5 p.m. Six or seven employees, including Moore, attended. They were told to attend by their support manager, Robert Hernberger. The meeting, run by Mkrtumyan and Hernberger, lasted about an hour and one-half hours. Regarding the elimination of the café channel, Mkrtumyan told the employees that they misunderstood statements by Williams and others regarding the elimination of the café channel. Moore and other employees pushed back, insist-

[374] Based on Kistler's response to a coworker who asked if "[i]t's back there," I find that Kistler's reference to "new" meant the poster was placed there after the organizing campaign began. (Id. at 31-32.)

[375] Peck, mentioning "some things that we've heard in the market . . . that it was a last resort to fire a district manage," did not deny the accuracy of those rumors. (Id. at 32.)

[376] Id. at 34-60.

[377] Id. at 79.

[378] Id. at 80-81.

[379] The facts and circumstances of this meeting are based on Moore's credible and undisputed testimony. Moore testified that Modzel also come into the store to discuss store renovations and its conversion to a drive-through. While the drive-through had already been in the planning process prior to September, the promise to renovate the rest of the store was new. (Tr. 1395-1397, 1429-1431.)

[380] GC Exh. 78(a)-(b).

[381] GC Exh. 78(b) at 5-21.

[382] Id. at 22-25.

ing that Williams told them that the café channel would be eliminated.[383]

O. East Robinson

1. Union Activity

Union activity at the East Robinson store developed later than other Buffalo-area stores. Certain employees there were aware of and supported the organizing campaign as it unfolded throughout the district.[384] By January, Victoria Conklin, a shift supervisor, Nathan Tarnowski, a barista trainer, and other employees began to openly express and solicit support for the Union, and wore prounion pins at work every day. Like Conklin and Tarnowski, Kayla Disorbo, a shift supervisor, waited until she was promoted in February to openly support to the Union.

On April 18, East Robinson employees filed a representation petition. On June 16, a majority of ballots were cast in favor of the Union. On July 14, the Union was certified as the bargaining representative for the store's hourly employees.

2. Corporate Officials Visit

As with the other Buffalo-area stores, corporate officials, including the district manager, regional manager, and partner resource managers, rarely visited East Robinson prior to the Union campaign. That changed in the fall of 2021 when they visited at least once a week.

3. Support Managers

The East Robinson store opened in April. The store's operational hours were 5 a.m. to 10 p.m. Kayla Moore was its first manager until August when she was replaced by Lukeitta Clark. Clark remained manager until she left the company in April. She was replaced by the support manager, Josie Havens. Havens remained as manager until she left in July.

Clark worked five days a week. Beginning in September, she was joined by several support managers. The first support manager to arrive was Amber Bogges. She stayed for a few weeks. Adrian Morales arrived in September and remained until January.[385] He was replaced as support manager by Josie Havens, who stayed until July. They rearranged parts of the store, determined what needed to be brought up to standard and corrected it. While there, the support managers would talk to employees while they worked, participate in "the play," and ask employees if they were using the company's "tools." They would also ask employees about their time with the company, if they were happy, and if there were problems in the store. Disorbo brought up a lingering problem with bees in the store, broken equipment.[386]

4. Operational Changes

a. Change to Central Training Location

With the influx of new hires in the fall of 2021, the usual training process of one trainer to one new employee for up to two weeks was condensed into one week. In addition, barista trainers were assigned two or three new employees.

In November, East Robinson became one of three training centers stores and remained open to customers. The training was to be performed by shift supervisors and barista trainers. However, the training ended up being performed mostly by shift supervisors.[387] Disorbo was assigned to train Kaitlyn Baganski for one week in January. By the end of April, the Respondent stopped centralized training at the East Robinson store due to a high number of callouts.[388]

b. Shift Supervisors Granted Authority to Close Store Channels

At East Robinson, shift supervisors were rarely able to get Clark to agree to close certain store channels if they were understaffed or otherwise overwhelmed. In the fall, however, Conklin and other shift supervisors were routinely given permission by Clark and support managers to disable mobile orders.[389]

c. Store and Employee Hours

In December or January, the store started closing at 9 p.m. Also, for several weeks in February, the Respondent reduced shift supervisor's hours by prohibiting them from picking up barista shifts.[390]

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[383] I based this finding on Moore's detailed recollection as to what Mkrtumyan said at the November 15 meeting. (Tr. 1416-1417.) Mkrtumyan explained why the renovation plans ran into roadblocks, but did not deny that she promised these improvements on November 15. (Tr. 3430-3431.)

[384] Tarnowski heard about the organizing campaign while he was still working at the Galleria kiosk.

[385] I did not credit Morales' denial—in response to leading questions—that he was told to watch and report on the union activities of employees. (Tr. 2987.)

[386] I based these findings on the credible testimony of Kayla Disorbo (Tr. 2361-2362.)

[387] Support manager Adrian Morales testified that shift supervisors and barista trainers trained the new employees, but conceded that the Respondent preferred to use shift supervisors over barista trainers since they were merely at a "developmental" stage of training. Morales denied that any barista trainers were denied training opportunities. However, he did not refute Tarnowski's credible testimony that (1) Clark lied to him in February that there was no one to train, and (2) he was not assigned anyone to train because new employees were being assigned mostly to shift supervisors. (Tr. 2220-2201, 2234-2235, 3264-3266.)

[388] Havens testimony attributing callouts at East Robinson as the reason why it stopped centralized training at that store was is not disputed. (Tr. 3306-3309.)

[389] Respondent's witnesses maintained that because disabling channels requires the ability to send certain emails, and shift supervisors do not have company-provided email accounts, it would be impossible for them to be granted the authority to shut down channels. (Tr. 3268, 3360-61). But what employees testified was that they were able to get the channels shut off, not by sending emails themselves but by, as Conklin explained, calling a store manager or support manager, and getting the channel turned off. (Tr. 1902-1903.)

[390] Regarding these developments, I credited the testimony of Conklin and Disorbo over Morales' hesitant, uncertainty as to whether operational whether hours affected by the weather. (Tr. 1895-1896, 2365-2367, 3267.)

d. Renovations

The East Robinson store closed for a reset one day in October. On that day, corporate officials arrived with printout schematics and proceeded to reorganize the store. Conklin and several other employees emptied the back room, deep cleaned everything, and then put everything back in accordance with the schematics. There were similar store resets in February and April.[391]

5. Clark's Response to the Organizing Campaign

a. Picking Up Shifts and Surveillance

Beginning around late August, Clark frequently expressed negative views about the Union to store employees. During weekly conversations she had on the floor with Victoria Conklin, a shift supervisor, they would discuss their mutual opposition to the unionization. Clark urged Conklin not to allow union supporters to take shifts at East Robinson because they might solicit employees to support the Union. Clark would also ask Conklin for updates on two known Union supporters, Kayla Sterner and Nathan Tarnowski.[392]

b. Mandatory Attendance at Listening Session

In October, Clark told East Robinson store employees it was mandatory that they attend an informational meeting relating to the Union campaign at a Marriott hotel. The store closed early at 2 p.m. so employees could attend the evening meeting. Approximately 40 East Robinson store employees attended.[393]

c. Conklin's Conversion

By in the first two weeks in January, Conklin's view of the Union changed and she joined the picket line at the Elmwood store. The following day she went to work wearing the Union pin and informed Clark that she supported the Union. Conklin explained that it was due to the company's COVID policies and had nothing to do with Clark's management. Clark replied "okay," walked away, and did not speak with Conklin for the rest of the day.[394]

During conversations in the back room in late January and February, Clark accused Conklin of gossiping about her and trying to get employees to go out on strike against her. Conklin denied this. Another employee had, in fact, previously spoken to Conklin about the possibility of striking. However, Conklin told her coworker that she was unfamiliar with such an activity and did not think it was a good idea.

On February 14, Clark and Elizabeth Pool, the NFB store manager, pulled Conklin, a shift supervisor, off the floor and they sat at a table. Pool said that she was there to explain a policy to Conklin because Clark was still new. Clark proceeded to tell Conklin that she needed to stop gossiping about her and trying to turn other employees against her. Conklin, having previously complained to Case about sexual harassment at the store, asked if the meeting was due to the fact that she openly supported the Union. Conklin then said she was not comfortable continuing the conversation, got up and left. Pool followed Conklin, who was crying, to the backroom and asked if she was okay. Conklin told Pool that she was being sexually harassed, which she reported to the ethics and compliance office, and about the prior conversation with Clark. She then asked if she could transfer to NFB. Pool said that was impossible because NFB was undergoing renovation, and that she had all the resources she needed by contacting ethics and compliance. Conklin declined Pool's offer to go home for the day and returned to the floor. Case did ask Conklin, however, to compile a list of grievances for a mediation between her and Clark.

On February 21, Case met again with Clark and Conklin. She read a list of grievances, the last of which criticized how Clark talked to and about other shift supervisors. Clark laughed, said there were things she could get Conklin in trouble for but declined to do so. Case then sent Clark home for the day and said she would investigate Conklin's grievances. At that point, Conklin asked if she could transfer to the Williamsville Place store because she knew they were understaffed. Case replied that there were no openings in the district for a shift supervisor. Conklin then offered to transfer as a barista, but Case said there were no openings for that position as well.[395] Conklin was terminated on June 22, six days after the June 16 election, for reasons unrelated to the complaint allegations at issue.

d. Shift Managers' Authority to Close Channels Removed

While the manager or support managers routinely allowed shift supervisors to close the café and disable mobile ordering at the East Robinson store in the fall of 2021, that changed in February after Conklin and Nathan Tarnowski began openly supporting the Union. When Conklin asked for permission to close the café or disable mobile ordering, managers would be much more likely say no than they had been in fall 2021. They also required greater detail, e.g., the number of staff on the floor, their positions on the floor, and whose break Conklin had to cover. The answer was usually no.[396]

[391] I based these findings on Conklin's credible and detailed testimony over Morales' lack of recollection regarding a store reset in October. (Tr. 1892-93, 3264.)

[392] Conklin and Disorbo provided credible and consistent testimony regarding Clark's efforts to suppress union activities at East Robinson. (Tr. 1887-1888, 2367-2369.)

[393] This finding is based on Disorbo's credible and undisputed testimony. (Tr. 2362-2363.)

[394] Clark's response on that occasion, without more, does not sufficiently support an inference that her attitude toward Conklin changed. (Tr. 1889-1890.)

[395] Case and Havens credibly recounted their interactions with Clark. Havens testified that she never observed Clark treat anyone differently because of their support for the Union (Tr. 3313.), while Case testified that Conklin did not specify the nature of Clark's behavior towards store employees. (Tr. 3365-3366.) Neither, however, diminished Conklin's credible and undisputed testimony regarding Clark's statements to her. (Tr. 1889-1902.)

[396] It is undisputed that shift supervisors do not have the sole authority to disable mobile ordering or any other channel. (Tr. 3414-3415, 3268, 3305.) Nor was it disputed that store managers and support managers made it more difficult to close a channel after January. (Tr. 1902-1904.)

e. Swapping Shifts

On two occasions in March 2022, Kayla Disorbo, a shift supervisor and known Union supporter, asked Clark for permission to switch shifts with an employee from another store.[397] In each instance, Clark asked Disorbo what store the employee came from because she did not want to mix employees who were prounion or from unionized stores with those from East Robinson." Disorbo complied with Clark's directive the first time. On the second occasion a few weeks later, Clark backed down after Disorbo refused to comply with the precondition.[398]

6. Nathan Tarnowski

a. Training Opportunities

Tarnowski began his employment with the Respondent in February 2021 as a barista at East Robinson. He was promoted to barista trainer in January. After Tarnowski began expressing his support for the Union, Clark stopped conversing with him.[399] Moreover, after being promoted to barista trainer—and openly supporting the Union—Tarnowski was never given training assignments. In February, about a month after his promotion, Tarnowski asked Clark why he was not being giving training assignments. She told him there was nobody to train. At the time, however, other shift supervisors were training new baristas at East Robinson.

b. March 23

Prior to March 23, there were occasions when Tarnowski was not feeling well and was permitted to go home by his shift supervisor. On other occasions, he told his supervisor he was sick, but was unable to leave because there were not enough people on the floor. In any event, he worked while sick, told his supervisor, and had not been sent home.[400]

On March 23, Tarnowski reported to work for an opening shift. Before clocking in, he told Beth Royer, his shift supervisor, that he was not feeling well. Tarnowski asked if she could send him home as soon as there were enough employees on the floor. Royer agreed. Tarnowski then completed the required COVID coach checklist of symptoms. Although he felt tired, had a headache, and was experiencing diarrhea, he omitted any of those symptoms when completing the checklist because they were symptoms that he regularly experienced.[401]

About 90 minutes later, there was enough floor coverage. At the time, Cark and Elizabeth Pool, the NFB store manager,[402] and an operations coach were on the floor. Tarnowski went to Royer and asked if he could go home because he was still not feeling well. Royer said okay, but Pool, overhearing the conversation, was not as accommodating. She walked over to Tarnowski and asked what his symptoms were. He told Pool that he had a headache and was tired, and she replied that Tarnowski could continue working because he did not mention nausea and diarrhea. However, Tarnowski said he was also experiencing diarrhea. Pool asked Tarnowski if he was serious. Tarnowski said yes. At that point, Pool slammed her tablet, entered Tarnowski's symptoms into the COVID coach, told him to clock out and meet her at a table. In that subsequent conversation, Pool excoriated Tarnowski for lying. She also shared her personal experience of losing a family member to COVID to stress the seriousness of the situation. Tarnowski, laughing about Pool prolonging an issue he believed to be over unremarkable symptoms, disagreed. He left after that conversation.[403]

On March 24, Tarnowski was feeling better, noticed that he had not been removed from the schedule, and returned to work. He completed the COVID coach and reported that he was symptom-free. About four hours into Tarnowski's shift, Pool came into the store. She approached Tarnowski and asked how he was feeling. He said he felt fine. Pool walked away and made a telephone call. She returned and asked Tarnowski what he did not understand. Tarnowski asked what she meant. Pool said he should not have returned to work because he needed to be symptom-free for at least 24 hours. Tarnowski laughed, told her she did not mention that the day before, and was being unreasonable and rude. Over Tarnowski's objection, Pool sent him home again.

Tarnowski returned to work within the next few days, spoke with Clark, and expressed concern that Pool was dragging out

[397] Disorbo did not reveal her support for the Union until February and eventually became a member of the store's bargaining committee. (Tr. 2358-2359.)

[398] Disorbo's testified that she "doubled down" against Clark's directive. (Tr. 2368-2369.)

[399] Notably, Tarnowski was one of the employees that Clark specifically named when asking Conklin about her coworkers' union activities. (Tr. 1889.)

[400] There was no evidence that Clark was aware of employees who were permitted to work with COVID symptoms. Tarnowski admitted that, when he disclosed all his symptoms to Pool, "that's when things changed," that Pool told him "how serious of a situation" it was, that he had lied and noted that a family member of hers had died from COVID, and that he responded that it wasn't that serious. (Tr. 2223-2224.) Pool asked Tarnowski why he did not answer the COVID coach honestly and he admitted that he thought he could make it through the day. Pool went over the COVID protocols and Tarnowski laughed at her and told her "It's not a big deal," that COVID is not real anymore, and that he "just wanted the money working [his] shift." (R Ex. 305 at 2; Tr. 2237-238). Pool went through the COVID coach with Tarnowski, which instructed him that he would need to be symptom-free for 24 hours, according to then-current guidance and policy, and sent him home –and had to instruct him four times to clock out and go home before he complied.

[401] Tarnowski admitted that if he had disclosed his symptoms, the COVID coach would have required him to go home. (Tr. 2236.)

[402] The NFB store was closed at the time for remodeling. (Tr. 3285-3286.)

[403] Pool's report of the incident was not supported by the record: "On 3/23, SM arrived and BAR Nathan came to SM to share they had not been feeling well." She also omitted any reference to the family tragedy that she shared with Tarnowski. (R. Exh. 305 at 2.) Tarnowski's credible and undisputed testimony established that Pool did not just arrive—she was standing nearby—and told "Beth," his shift supervisor—not Pool or "Liz"—that he was not feeling well. (Tr. 2220-2224, 2236-2240.) Moreover, the Respondent did not dispute Tarnowski's testimony that the COVID Coach only asked if he was experiencing "out of the ordinary or unusual," and the diarrhea, headache and fatigue were "ordinary symptoms" to him. (Tr. 2238, 2241.)

the matter. Clark told Tarnowski he needed to enter all of his symptoms into the COVID coach and that he could be fired for not listing his symptoms. Tarnowski asked if he was being fired, but Clark said that he would not be disciplined.[404] A few days later, Clark told Tarnowski that his sneakers did not comply with the dress code. She told him to go home but gave him the option of returning with compliant footwear. Tarnowski went home for his lunch break and returned with the correct shoes.[405]

On March 30, Tarnowski arrived to work and Clark immediately pulled him into the back room. She handed him a termination notice for violating the Respondent's health and safety standards. Tarnowski expressed his surprise because he always had a good relationship with Clark. She explained that it was not her choice, "it was corporate."[406] After Tarnowski refused to sign the separation form, Clark went and got Pool to sign it.[407]

7. Victoria Conklin

On an unspecified day in March, Conklin was working as a shift supervisor when she received a call from her mother asking her to go to the hospital to be with her grandfather, who had dementia, and who was having chest pains. She had 3 1/2 hours remaining on her shift. Conklin contacted all the shift supervisors at East Robinson as well as at the NFB store, but no one was available to cover for her. She then contacted Clark. In a prior emergency situation the prior store manager allowed Conklin to leave the store during her shift. Clark, however, was unable to come in because she was at a birthday party. As a result, Conklin stayed and finished her shift.[408]

P. Transit & Maple

1. Union Activity

While Madison Emler, a barista trainer, and other Transit & Maple store employees were aware of the organizing campaign through social media. However, a representation petition has never been filed for Transit & Maple.

2. Corporate Officials Visit

Prior to the organizing campaign going public, the highest level corporate official to visit Transit & Maple was David LeFrois, the district manager.[409] LeFrois visited about once every three months, but only to speak with Joseph DePonceau, the store manager. After August 23, LeFrois visited the store about twice each week and spent time on the floor speaking with employees.

Beginning in early September, Williams, Mkrtumyan, and Murphy came to the store about once a week. The times would vary between 10 minutes and two hours. They would ask employees how things were going and if there was anything they could do. Williams would do assorted tasks as well, such as taking out the trash, restocking the refrigerators. Williams even went to another store to buy a supply of milk for Transit & Maple.

During Williams first visit, Emler shared the concerns of store employees that DePonceau was not following the company's COVID protocol. She also brought up suggestions for things that could be improved in the store. Emler added that she brought these concerns with DePonceau, but nothing had been done. Several days later, DePonceau informed Emler that if she had concerns, she should have brought them to him and no one else. He also told Emler that if he caught her talking about him or her concerns with Williams or anyone else, he would write her up.gers

DePonceau remained the store manager until he left in November. Prior to the campaign, he worked four days a week and spent of his time on the floor. After the campaign started, DePonceau worked alongside employees on the floor a lot more. Richard Tran was the first support manager to arrive in September. He stayed until late December. Tran worked at the store about 60 hours per week.

4. Renovations

Transit & Maple opened in September 2020. In October 2021, Respondent renovated its Transit & Maple store twice—once in October and again in November.

5. Training

Emler, a barista trainer, has not formally trained any new employees since training was centralized in other stores. She did, however, end up informally training about eight of those new employees—for no additional compensation—because they lacked the necessary knowledge to work on bar. Until they received additional training from Emler and other barista trainers, new employees were limited to working at the drive-through or front register.

6. Listening Sessions

a. September

Transit & Maple employees were scheduled for and attended several listening sessions. In September, most store employees were scheduled for one-hour shifts at the first meeting at 4 p.m. The meeting was held in the store, which closed at 3 p.m. instead of 9 p.m. DePonceau strongly encouraged employees to attend. About 15-20 employees attended. Peck and Mkr-

[404] It is unclear from Tarnowski's testimony whether he returned to work on March 25 or several days later. In any event, there is no indication that he was experiencing any COVID-related symptoms on that occasion. (Tr. 2226-2227.)

[405] It is also unclear from Tarnowski's testimony whether he also met whether Pool was present when he spoke to Clark after March 24. (Tr. 2226-2228.)

[406] Kelly testified that she has been involved in imposing discipline on other partners for COVID policy violations and dishonesty issues, just as she did with Tarnowski and Morreale. (Tr. 3132-3134.) However, it was Pool, not Kelly, who triggered Tarnowski's termination.

[407] The notice of separation did not mention of Tarnowski's prior tardiness or dress code violations. (GC Exh. 161, 2228-2230.)

[408] Conklin conceded that Clark did not actually deny her request to leave that day. (Tr. 1904-1909, 1914-1917.)

[409] Emler credibly provided testimony regarding the events at Transit & Maple. She recalled having met the previous regional director at the since-closed Niagara Falls outlets kiosk in 2018. (Tr. 547-558.)

tumyan ran that meeting, which focused on the election process.

After the meeting ended, Emler asked Peck about the company's anti-fraternization policy because of her close relationship with a shift supervisor. Peck sat down with Emler and, after discussing the matter, told Emler that it was not fair and she would look into it because the store's employees are part of a family.

b. Late September/Early October

Another meeting was held at the store about two weeks later. DePonceau sent employees a text message strongly encouraging them to attend. The message said that the meeting was being held to answer employees' questions. Once again, the store closed for the day at 3 p.m. for a 4 p.m. meeting. The meeting lasted about one hour and was attended by 15-20 employees. Mkrtumyan and Murphy ran the meeting, which also dealt with the election process.

c. Late October/Early November

In late October or early November, the Transit & Maple store closed for the day at 4 p.m. so employees could attend a 5 p.m. meeting at an area hotel. Eight Transit & Maple employees attended. Again, employees were encouraged to attend this meeting which included employees from other stores. The employees learned about the meeting from letters hand delivered to them by DePonceau. The letters were in envelopes with their names and the store number. The meeting, conducted by Pusatier, included a PowerPoint presentation relating to the ramifications of union membership. The presentation included a statement that unionization could result in employees continuing to receive the same, more, or less benefits. In addition, employees were shown a chart listing the estimated range of union dues, with Pusatier focusing and zooming in on the potential maximum dues amount.[410]

Q. Orchard Park

1. Union Activity

James Skretta, a barista at the Orchard Park store, was a founding member of the organizing committee and signatory to the August 23 letter. He transferred to Sheridan & Bailey in late September. Orchard Park employees continued to discuss the Union campaign at work throughout the fall of 2021. However, a representation petition has never been filed for that store.[411]

2. Store Operations

Orchard Park opened in January 2021. Sonia Velasquez was the store manager. A support manager, Amelia Ruiz, arrived in September and stayed for about three months. At Orchard Park, the use of headsets by employees depended on what position they were working—drive-through, bar, and customer service. Velasquez would only wear one if she was working at one of those positions. Melissa Garcia, a shift supervisor, did not regularly wear one.[412]

3. Renovations

Orchard Park had several repair requests pending for quite some time that had not been addressed. They included a broken awning over the drive-through window, malfunctioning faucet, cabinet door that did not close Skretta mentioned these issues during a September listening session. They were all fixed within two to three weeks after that meeting.[413]

4. Listening Session

On September 20, Pusatier, Cioffi, and Modzel held a listening session at the Orchard Park store. The store closed early for the meeting, which was recorded by James Skretta, a barista.[414] At this meeting, Modzel reported the complaints that the corporate officials had been hearing about in other listening sessions, such as understaffing, training, and facilities issues. He explained that the Respondent was going "super-fast to try to get all of that addressed as quick as we can" by ramping up hiring, centralizing training of new employees at one closed store, and bringing in staff to resolve facilities issues. In addition, the Respondent was sending the facilities services staff to every store to find and fix anything broken.[415]

Referring to his practice at his previous market in Washington, D.C., Modzel explained that that the listening session was "the Starbucks culture, what's happening right now:"

I literally sit down with baristas every single month to listen what's working, what's not working, groups just like this, and based on what they say, we act immediately. You need more labor? Let's figure that out. You need more staffing? Let's get a recruiter in. What you've seen in the last two weeks is actually Starbucks.[416]

After Modzel apologized that Buffalo market employees had not received such attention, Pusatier conceded that the Respondent "did over 2,000 listening sessions across the country" in 2020 but not in Buffalo. Addressing feedback already received from employees at other Buffalo-area stores about the suspicious timing of the arrival of Respondent's corporate representatives, she claimed:

You shared that you're hurting, and as soon as we found out, just like Adam and - - many others working support, we

[410] Emler conceded that she was not sure if the meetings were mandatory but attended them because they were placed on her schedule. Moreover, although she had a "foggy" recollection about the specifics of the second meeting, I rely on Emler's credible and undisputed recollection of the subjects discussed at these meetings. (Tr. 555-562, 580.)

[411] Melissa Garcia, an Orchard Park shift manager who was promoted to assistant store manager in November, testified that Ruiz's presence in the store did deter employees from talking about the union at work. While I did not credit such speculation, it does establish that employees continued discussing the organizing campaign throughout the fall. (Tr. 2451-2452, 2642-2643.)

[412] There is no indication that Velasquez or Ruiz wore headsets while off the floor. (Tr. 2640-2641.)

[413] Velasquez corroborated Skretta's testimony. (Tr. 2640, 2874-2875.)

[414] GC Exh. 162(a)-(b).

[415] Id. at 13-17.

[416] Id. at 27.

dropped everything to be here.[417]

R. Main Street

1. Union Activity

Cory Johnson was a barista at the Main Street store from January 2021 until January, when he transferred to a store in Richmond, Virginia. He currently works at one of the Respondent's stores in Fredrick, Maryland. Johnson was a member of the organizing committee and signatory to the August 23 letter. He also spoke openly at work of his support for the Union with coworkers and managers. A representation petition has never been filed for the Main Street store.

2. Corporate Officials Visit

Prior to August 23, the highest level corporate official to the Main Street store was Shelby Young, the district manager. She visited the Main Street store once every couple of months. She would interact with employees, meet with Almond, and then leave.

After August 23, Williams, Nelson, and other corporate officials visited regularly. It was rare for a day to go by without one of those officials in the store. They spoke to employees, asked how they were doing, and if they needed help with anything. If employees passed on those offers, the officials would then ask how they could make it better. The officials took out the garbage or worked behind the counter, the handoff lane, or cash register.

3. Granting Benefits

In customary fashion, the Respondent began tackling the Main Street employees' wish list. Exterminators eliminated the bee problem. Staffing increased during peak hours from seven or eight to 10 or 11 employees. Similarly, and contrary to company policy requiring store manager approval, the Respondent permitted Main Street shift supervisors to close channels (e.g., mobile ordering, drive-through or café) or even the entire store early if staff were overwhelmed.[418]

Sometime in September or October, Main Street store manager Julie Almond informed employees through the GroupMe messaging app about company mental health benefits available through Lyra Health. She also told them that mental health counselors would be available to employees at the store on certain dates and times.[419]

4. Support Managers

Prior to August 23, there were shifts when Julie Almond, the store manager, was not present. By October, Sebastian Garcia and Alex Roux arrived as support managers. They work on the floor or on their computers in the café. Roux was reassigned to another Buffalo-area store in November. Garcia stayed until February. While Garcia and Roux were both at Main Street, it would be rare for a manager not to be present.

Sometime in November, Kathleen Kelly, a newly-added partner resource manager to the Buffalo area, informed Almond hat she was not meeting the expectations of her job. Some of the concerns mentioned included the failure to hold her employees accountable for various violations and creating a store environment where employees wanted to work. As a result, Almond was "separated" from the company.[420]

5. Listening Sessions

a. Mid-September

The Respondent held an evening listening session at the Main Street store in mid-September. The store, which normally closed at 10 p.m., closed at 6 p.m. for the meeting. Approximately 15-16 employees attended the session, which lasted one and one-half to two hours. Three corporate officials, including Szto, engaged in their customary solicitation of complaints. The employees proceeded to complain about their manager, inadequate training, understaffing, and bee infestation. An employee also complained that the constant visits by corporate officials intimidated her and asked that it stop. One of the management representatives replied that they had been hearing that complaint and would take care of it.

The corporate officials also predicted that employees in all 20 stores in the Buffalo market, not just the three petitioning stores, would be voting on union representation. Johnson disagreed, explaining that the issue was before the Board, and there was no reason to believe that Main Street employees would be voting in an election for which they did not petition. He also expressed his support for the Union and questioned the truth of Szto's other statements about the Union.[421]

b. October

The Respondent scheduled a second meeting for Main Street store employees in October. The store closed early for the meeting, which was held at a hotel near the Buffalo airport. In contrast to the first meeting, the Respondent divided employees

[417] As previously noted, the Respondent only "found out" about the problems after the organizing campaign launched. (Id. at 28.)

[418] I based this finding on Mkrtumyan's testimony that company policy required the manager's approval to close a channel or the store early (Tr. 3415-3417), and Johnson's undisputed testimony that the Respondent afforded shift managers the discretion to circumvent that policy after employees complained about understaffing at the mid-September listening session. (Tr. 2433-2434.) Casey Moore's credible testimony on this point only established that, prior to August 23, shift managers often closed the store without a manager present. She did not indicate that they closed early. (Tr. 1437.)

[419] Although Johnson was unaware that mental health services were available, page 68 of the Partner Guide, effective April 2020, indicates that the Respondent already offered mental health support and resources. That section provides employees with a link to the Partner Hub Benefits Overview Page offering Lyra mental health therapy and counseling for all employees. There is no indication, however, whether such services previously included counseling services at the store. In any event, Johnson did not know if counselors ever came to the store. (Tr. 2436-2437; GC Exh. 140; R. Exh. 100.)

[420] Although Kelly's explanation as to the reasons were for the separation were vague, the circumstances indicate that Almond's departure was forced. (Tr. 3128-3129.)

[421] Johnson credibly testified remotely regarding the meeting, but could not recall the names of the other two management representatives. In any event, their pitch to the Main Street employees was very similar to the presentations by Williams, Nelson, Peck, and Pusatier at the other stores. (Tr. 2429-2434.)

into smaller groups and assigned them to attend one of four meetings.[422]

6. Cory Johnson

In early November, Johnson informed Garcia that he wanted to transfer to the Sheridan and Bailey store.[423] Garcia printed out the applicable forms and explained the process to Johnson. He expected that a transfer would not be a problem because Main Street was sufficiently staffed. Garcia instructed Johnson to meet with Sheridan & Bailey's manager to determine whether that store had room for another barista. In the meantime, since the next schedule had not been made yet, Garcia said he would leave Johnson off the schedule in case his transfer went through before then.

Johnson visited Sheridan and Bailey shortly thereafter and spoke to Derek Sveen, the store manager about transferring there. He told Sveen he had open availability, preferred mornings, and wanted to work about 35 hours per week. Sveen said that was perfect, gave Johnson his email address, and asked him to email him so the transfer could be arranged. He also told Johnson that he would discuss the transfer request with Szto when he met with him later that day.

After that conversation, Johnson attempted to follow up with Sveen by email and in person. Eventually he reached Sveen by phone. Sveen told Johnson that he actually would not be able to approve the transfer because he was fully staffed. Johnson asked what had changed since their initial conversation. Sveen said at that time he had been unaware more people had already been hired. Johnson then took a month-long leave of absence, during which a request he had made to transfer to Richmond, Virginia was approved.[424]

S. Transit & Regal

1. Union Activity

Brian Murray, a barista at the Transit & Regal store, was a member of the organizing committee and signatory to the August 23 letter. He wore a prounion pin and shirt during every shift. In a September listening session, he disputed assertions by corporate officials that all Buffalo-area stores would vote in one election. In another meeting, he questioned a corporate official's claims about the Service Employees International Union, asking how they were relevant to employees' desires to form their own labor organization.

Murray recruited Alexis Hunter, newly-hired in Augus, to serve with him on the organizing committee. Hunter also openly supported the Union and wore prounion pins. The Union has never filed a representation petition for Transit & Regal.[425]

2. Corporate Officials Visit

As with every other store in his district, LeFrois visited Transit & Regal infrequently. He would drop by to pick up paperwork or speak with Jodi Keller, the store manager. LeFrois did not engage with employees on the floor. After the campaign launched, LeFrois made frequent visits to Transit & Regal. He would meet with Keller and corporate officials, and work on his laptop facing the bar.

After August 23, Williams, Nelson, Pusatier, and other corporate officials made unprecedented visits to Transit & Regal. They visited once or twice each week. Williams would stock supplies, swept the floor, took out the trash, and inspected the store.

On one occasion during the second week in September, Murray was working at the drive-through station when Williams walked into the café. Williams called out Murray's name and walked behind the bar to the drive-through area. She asked about Murray's experiences working with the company. Murray, taking orders, handing out drinks, and responding to Williams at the same time, expressed delight working for the company. The conversation ended with Murray, who was wearing a prounion pin and T-shirt, asking Williams to sign the Fair Election Principles. Williams replied that she was still learning about unions and would take a look at it.

3. Support Managers

Transit & Regal's store manager was Jodi Keller. Multiple support managers arrived by early September and stayed until the store closed in April for renovations. They helped to alleviate the store's staffing shortages by working in several channels—ovens, drive-through, handoffs, and customer support. The rest of the time, they sat in the café working on their laptops.

Prior the arrival of the support managers, Keller would work on the floor to fill gaps if the store was short-staffed. Moreover, the only employees who wore headsets were those working on the floor. The support managers, however, worked on the floor most of their shifts. They also wore headsets at all times, even when they were off the floor.

4. The Respondent's Responses

a. Granting Benefits

Prior to August 23, Transit & Regal was often understaffed, but employees' requests to have mobile orders turned off during peak times were never granted. That changed in September and October, as district managers routinely granted managers' requests to disable different operational channels in stores. For example, East Robinson employee Brian Murray, an employee at Transit & Regal, also testified that shift supervisors were allowed to decide whether to turn off mobile orders in their store when circumstances called.

Within a week or two after Murray's complaint about the

[422] Johnson did not specify a date for the meeting or the subject matters discussed. (Tr. 2434-2435.)

[423] Sheridan and Bailey had filed a petition for an election on November 11. (Tr. 2438, 2442; GC Exh. 15,)

[424] The General Counsel contends that the transfer denial was notably around the time that Union petitioned to represent the Sheridan & Bailey store. (Tr. 2438-2447; GC Exh. 15.) The Respondent did, however, add 10-15 new employees to Sheridan & Bailey's roster in September and October. Also, the transfer request of Skretta, another open Union supporter, was approved in November. (Tr. 2474.)

[425] Except where otherwise stated, I based findings relating to the Transit & Regal store on the credible testimony of Brian Murray and Alexis Hunter.

syrup shortage during the September 22 listening session, the store was restocked with syrups. Other products were also replenished.

b. Renovations

Transit & Regal underwent two renovations. First, a short one in October that lasted about one week. During that time, the Respondent addressed concerns expressed to managers prior to September and mentioned at the first listening session. New equipment was added, a counter was lowered, a longer hand-off plane for mobile and café orders was installed, and bug-zappers were installed at the drive-through station and the back of the store. The second renovation began around the end of April and lasted until the end of May.

c. Stricter Policy Enforcement

Prior to the organizing campaign, Transit & Regal's store manager routinely allowed employees to work while out of compliance with the dress code. Murray and other employees frequently wore T-shirts with various non-company designs, logos, and graphics without mention from managers. That practice changed in late October and early November when Keller and Rees implemented the Respondent's area-wide policy reset at Transit & Regal. They met individually with employees, including Hunter and Murray, and had them sign and reacknowledge the dress and time and attendance policies.

Hunter reacknowledged the policies and signed the forms. Murray, however, refused to sign, insisting that the request violated federal labor law because it was targeted at the prounion shirt Murray had been wearing in September and October. Keller said she would discuss it with Szto. Several days later, Szto spoke with Murray at the store. Szto denied that the policy was targeted at Union.

In November, Tanner Rees, the assistant store manager, informed Hunter that the white shoes she had been wearing since she was hired did not comply with the dress code. Although Hunter did not make Hunter stop wearing them right away, he told her that they would eventually have to be replaced.

In March, Mann noticed that Hunter had two noise piercings. She told Keller that Hunter was violating policy by wearing more than one. Keller went to Hunter and told her she needed to take one off because Mann approached her about it. Otherwise, she would not have enforced the policy. Hunter, who had been wearing the two piercings since she started working for the Respondent, complied and removed one.

Also In March, Keller also began enforcing its pin policy. By then, Hunter was wearing two company issued pins—one for pronouns and "Strong Like Coffee"—and three other pins—a prounion pin, LGBT pin, and Memphis Seven pin. Keller told Hunter that her two company-issued pins were could be worn. However, she was only permitted to wear one of her union-related pins and, thus, required to remove one. Hunter complied.

d. Food and Drink Policy

During the pandemic, the Respondent had expanded the food and beverage benefit by allowing employees to pick up one free food mark-out and beverage at any company store on their days off. Around the latter part of November, the Respondent reduced that benefit by limiting employees to seven food mark-outs at their home store per week. In addition, employees were no longer permitted to leave the floor to drink a beverage unless it was during their 10 or 30 minute breaks.

5. Listening Sessions

a. September 22

On September 22, the Transit & Regal store, which usually closed at 9 p.m., closed at 5 p.m. for a 6 p.m. listening session with the Williams team. As was the case with other stores in the district, Transit & Regal had never closed early for a meeting before. A meeting notice posted in the back of the store encouraged all of the store's employees to attend. However, Tanner Rees, the assistant store manager, told at least one employee, Hunter, that the meeting was mandatory because employees would be paid to attend. About 17-18 of the store's 22 employees attended.

Prior to the meeting, Murray approached Williams and urged her to sign the Fair Election Principles. Williams deflected and asked Murray about his experiences working for the Respondent, as well as any issues and problems at the store. Murray replied that there had been a syrup shortage since May, which made it difficult to make certain coffees.[426]

Williams left before the meeting began, but Pusatier, Szto, and Cioffi remained. Pusatier led the meeting and followed the usual script. After a coffee tasting and introductions, she asked the employees to describe their experiences working for the Respondent and any problems in their store. She also spoke about the election process and the Respondent's desire to have a district-wide election. Responding to employees' complaints about understaffing, supply shortages, and difficulties with mobile orders and customizing drinks, Pusatier said the Respondent was there to fix their problems.

b. September 29

On September 29, the store closed for the day at 3 p.m. for a 6 p.m. listening session. Employees had been notified of the meeting by Jodi Keller, the store manager, and in a posting in the back of the store. The meeting was run by Szto, Modzel, Christopher Stewart, a partner resources manager, and Louis, a support district manager. About 17-19 employees attended.

Stewart talked about the SEIU's organizational structure, its connection to the Union, and the consequences of unionization—the inability of managers to help out behind the bar and high union membership dues—and why employees did not need a union to represent them. Szto told the employees that he was there to help and create the proper "partner experience" which had been absent from their store. Modzel also spoke about the disadvantages of unionization in contrast to the company's preference for a partner-to-partner approach in resolving employees' problems.

Murray and Hunter spoke up on behalf of the Union. At one point, Murray asked Stewart how the Union's affiliation with the SEIU was relevant to the decision of employees to unionize.

[426] I based these findings on the credible and undisputed testimony of Hunter and Murray. (Tr. 595-597, 1221-1226.)

Stewart cut Murray off.

c. The October 14 Meeting

The store closed early on October 14 for listening sessions at the Courtyard Marriott at 6 p.m. and 8 p.m. Employees were handed individually addressed invitations by Rees listing the date and time to attend. The letter said that attendance was mandatory and, if we were unable to attend, to reach out to the manager or Rees to reschedule.[427] Murray attended the 6 p.m. meeting; Hunter attended at 8 p.m.

The meeting was conducted by Szto, Melanie Joy and a partner resource employee. Each one was attended by 5-6 Transit & Regal employees and lasted one and a half to two hours. The corporate officials provided PowerPoint presentations about the Union, its history, processes, and concerns that they posed for employees. Murray disputed "facts" in the presentation as "perspectives."[428]

6. Brian Murray

On November 10, a few days after the dress-code conversation with Szto, Murray called off sick. On November 11, Murray called off sick again. On that occasion, Murray spoke with Rees, who indicated that he understood. About an hour and a half later, Rees called Murray back and said Murray was being placed on a COVID leave of absence for 10 days. Rees stated that he spoke with Szto who ordered the 10-day leave of absence because Murray had called out for two days. Murray then asked if a negative COVID test would circumvent the leave of absence requirement. Rees replied that it would not and Murray was out for 10 days.

On November 22, Murray returned to work. That day, Murray was wearing a prounion T-shirt. After clocking in, Keller took Murray outside on the patio for a conversation. Keller expressed her appreciation for Murray's respectfulness toward her regarding the dress code. Having spoken with Szto, however, she explained that she needed to enforce the dress code. Keller said she was not sure of the next steps, but said that the Respondent would be following up on this issue. She then sent Murray home for the day.

On November 23, Murray returned to work, again wearing a prounion T-shirt. Shortly thereafter, Rees saw the shirt and sent Murray home for the day. Before he even punched in, Rees told him to go home.

On November 25, Thanksgiving Day, Murray reported to work wearing a black T-shirt. Szto, Keller, and Rees were waiting. Murray commented to Reese upon entering the store that he was being given the gift of Murray's continued employment with the Respondent, along with a request to have Szto stop enforcing the dress code. During the conversation that followed, Murray asked Szto to stop enforcing the dress code in a way that was harming store employees. Szto, although pleased that Murray was following the dress code, denied that the policy was being enforced in order to harm workers. Later that day, Murray was handed a written warning for dress code violation signed by Rees.[429]

T. UB Commons

1. Union Activity

After August 23, Vianca Colon, a barista at the UB Commons store, wore a prounion button and openly spoke with coworkers about the Union. However, the store has not filed a representation petition.[430]

2. Store Operations

The UB Commons store is located on the University of Buffalo campus. The regular store hours were 7 a.m. to 9 p.m. In December, as typically occurred during semester breaks, the store closed at 7 p.m. When students returned in January, however, the closing time remained at 7 p.m.[431]

3. Store Reset

Sometime between September and November, the Respondent required UB Commons employees to reacknowledge in writing the dress code and time and attendance policies.

4. Renovations

Sometime between November and January, the Respondent rearranged the UB Commons storage rooms and installed new equipment.

5. Listening Sessions[432]

a. Late September

UB Commons' employees were informed by their manager, Tina Zunner to attend a listening session in late September. The store, which usually closed at 9 p.m., closed in the afternoon for the meeting. The meeting, conducted by Case, Modzel, and one other official, lasted about one hour.[433] They spoke about company benefits, the imminent hiring surge, the roles of the support managers, and replacing old equipment in the store. One of the corporate representatives then spoke about unions. However, when asked by employees about un-

[427] Although Hunter interpreted the invitation as a mandate to attend the meetings, she conceded that the word "mandatory" was not mentioned. (Tr. 602, 615-616.) Murray, however, credibly testified that employees that had been scheduled to work during the evening shift preempted by the meetings would need one of the meetings in order to be paid. (Tr. 1238.)

[428] While Murray provided more detail than Hunter, it is clear that the Respondent provided the same PowerPoint presentation at both meetings. (Tr. 601-603, 1239-1240.)

[429] GC Ex. 102; R. Exh. 309.)

[430] I based findings relating to UB Commons on Colon's very credible and undisputed testimony.

[431] Mkrtumyan did not refute Colon's credible testimony that UB Commons store hours did not return to normal in January. (Tr. 1725, 3428.)

[432] Colon testified that a colleague, Heather, told her she attended a listening session before August. However, she did not specify whether the meeting was held in Buffalo, in person, or the colleague's position. (Tr. 1730-1732.) As previously noted, the Respondent previously held listening sessions elsewhere, as well virtual meetings for Buffalo-area shift supervisors. However, baristas were not included in those meetings.

[433] Colon, an employee since September 2019, had never met company officials above the level of store manager. (Tr. 1714.)

ions, she said they would have to do their own research.[434]

b. October 12

The Respondent also held another listening session on October 12 at 8 p.m. at a hotel near UB Commons. The store closed early for the meeting. The invitations were addressed individually to each UB Commons' employee from Szto, Mkrtumyan, and Pusatier. (Tr. 1722-25.) They stated, in pertinent part:

> These meetings are a priority for all of us because we get to hear your questions, update you on our action plan, and share information about unionization to help you get all the facts you need. Please make every effort to prioritize your meeting.
>
> If the meeting time doesn't work for you, we also have make-up sessions available – please reach out to your [store manager] for more information. As with any company meetings, and aligned to the laws in New York, partners will be paid three hours to attend, or the equivalent of their shift if its scheduled over this time.[435]

U. Niagara Falls Boulevard

The Respondent closed the NFB store for several weeks during September and October to eliminate standing water in the store. A representation petition has never been filed for the NFB store. As previously noted, however, the Respondent temporarily transferred NFB's employees to the Genesee Street store and attempted to include them on that store's voting list.[436]

V. Hamburg

The Hamburg store was closed for renovations from November to April. A representation petition has never been filed for the Hamburg store. As previously noted, however, the Respondent temporarily transferred some of those employees to the Camp Road store during that store's election period.[437]

W. The Respondent's Post-August 23 Disciplinary Practices[438]

Between August 23 and July 2022, stricter enforcement of the Respondent's policies in the Buffalo market resulted in a significant increase in disciplinary action,[439] including stores with little or no past disciplinary incidents:

Store	Employee	Date	Policy	Discipline
Camp Road	William Westlake	7//26/2022	Dress	Documented coaching
Camp Road	William Westlake	12/9/2021	T & A	Documented coaching
Del. & Chippewa	Jonavn Simmons	7/10/2022	T & A	Termination
Del. & Chippewa	Melanie Petrone	7/5/2022	T & A	Leave of absence[440]
Del. & Chippewa	T. Chaney-Logan	7/5/2022	T & A	Final written warning
Del. & Chippewa	Kayla Sturniolo	1/10/ 2022	T & A, Dress	Documented coaching
Del & Chippewa	Allegra Anastasi	12/16/2021	T & A	Written warning
Del. & Chippewa	C. Casamassa	12/8/2021	Health, Dress	Final written warning
Del. & Chippewa	Allegra Anastasi	9/14/2021	T & A	Documented coaching
Del. & Chippewa	Camille Roosevelt	6/15/2019	Cash handling	Documented coaching
Del. & Chippewa	Camille Roosevelt	3/11/2019	Security	Written warning
Del. & Kenmore	G. DeAngelo-Diel	1/5/2022	T & A	Documented coaching
Del. & Kenmore	Brennan Jaquith	12/31/2022	T & A	Documented coaching
Del. & Kenm	Anahi Vidal	12/24/2022	T & A	Documented

[434] Colon testified that she attended the meeting because it was "implied that it was mandatory and we should go." However, she did not recall what her manager told her. (Tr. 1712-1714, 1717-1722.)

[435] Colon credibly testified that, although she was paid to attend the meeting, she was unable to complete her shift that day because of the store closure. (GC Exh. 131; Tr. 1722-1725.)

[436] These findings are based on undisputed testimony by Rizzo and Westlake. (Tr. 720, 1174, 1179.)

[437] These findings are also based on Westlake's undisputed testimony. (Tr. 1174, 1179.)

[438] In the absence of corrective action documentation explaining the facts and circumstances, I gave minimal weight to discipline administered to employees India Southern and Travis Williams. (Tr. 2933-2934.)

[439] Given the lack of evidence relating to union activities and company responses thereto, I gave no weight to disciplinary actions issued after August 23 to employees in stores outside the Buffalo market. (R. Exhs. 276-277, 279-280.) In addition, I did not give any weight to an unsigned final written warning allegedly issued to Connor Olson, a Delaware & Chippewa employee. (R. Exh. 110.) That document was received in evidence, but only for the limited purpose of establishing that it was a business record generated by the Respondent—not as proof that the discipline actually issued. (Tr. 2934-2937.)

[440] Petrone was likely facing termination if she did not take a leave of absence. (R. Exh. 169.)

ore				coaching
Del. & Sheridan	Kyra Rowsey	7/7/2022	T & A	Termination
Del. & Sheridan	Shalonda Colbert	5/18/2022	T & A	Written Warning
East Robinson	Guss Birtha	5/14/2022	T & A	Documented coaching
East Robinson	Rokhya Cisse	3/24/2022	T & A	Written warning
East Robinson	Denasia Stewart	3/9/2022	T & A	Written warning
Elmwood	Cortlin Harrison	3/30/2022	T & A, Behavior	Final written warning
Genesee Street	Brandon Janca	11/23/2021	T & A	Written warning
Genesee Street	Alexis Rizzo	9/20/2021	T & A	Written warning
Genesee Street	Yazminn Green	9/14/2021	T & A	Documented coaching
Henrietta Sq. Mkt.	David Goyette	6/6/2022	Dress	Documented coaching
Henrietta Sq. Mkt.	David Goyette	6/6/2022	T & A	Written warning
Hamburg	Lyla Dunkle	6/15/2022	Dress	Documented coaching
Monroe Avenue	J. Sincerbeaux	6/6/2021	T & A	Documented coaching
Monroe Avenue	K. Lani Panneltz	6/6/2021	T & A	Documented coaching
Monroe Avenue	Jessica Woods	5/31/2022	T & A	Written warning
Orchard Park	Brittany Patterson	6/21/2022	T & A	Written warning
Orchard Park	Benjamin Laflin	6/13/2022	T & A	Written warning
Orchard Park	Benjamin Laflin	5/12/2022	T & A	Documented coaching
Orchard Park	Mariah Brooks	3/2/2022	T & A	Documented coaching
Orchard Park	Dena Mohammad	3/1/2022	Dress	Documented coaching
Orchard Park	Brittany Patterson	1/21/2022	T & A	Documented coaching
Sheridan-Bailey	Matthew Morreale	10/18/2021	COVID - Honesty	Termination
South Greece	Sandra Griffith	6/21/2022	Dress	Documented coaching
Transit Commons	Alyssa Cofield	9/24/2021	T & A, Behavior	Written warning
Transit & French	Kayla Sturniolo	2/4/2022	Dress	Documented coaching
Transit & French	Ryan Wawrzeniec	2/4/2022	Dress	Documented coaching
Transit & French	James Boyers	2/4/2022`	T & A	Written warning
Transit & French	Laura Duggan	1/14/2022	Dress	Documented coaching
Transit & French	Perry Wheeler	1/14/2022	T & A	Documented coaching
Transit & French	Nashaly Gauthier	1/6/2022	T & A	Documented coaching
Transit & French	Kourtni McDaniel	1/6/2022	T & A	Documented coaching
Transit & French	Henyia Scott	12/2/2021	Dress	Documented coaching
Transit & French	Jennifer Caravata	11/-/2021	Disrespect	Termination
Transit & Regal	Danielle Love	2/14/2021	T & A	Final written warning
Transit & Regal	Brian Murray	1/9/2022	T & A	Leave of absence
Sheri-	Nahja White	1/30/2022	T & A	Docu-

dan-Bailey				mented coaching
Sheri-dan-Bailey	Ash Golden-berg	12/20/2021	Disre-spect	Written warning
Wil-liams-ville Pl.	Marcile Shanklin	6/17/2022	T & A	Termina-tion
Wil-liams-ville Pl.	Mariyi Ramos	6/17/2022	T & A	Docu-mented coaching

Legal Analysis

I. THE SECTION 8(A)(1) ALLEGATIONS

Section 8(a)(1) makes it unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. Section 7 guarantees employees the right 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. The concept of "mutual aid or protection" focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees. *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). Concerted activity includes that which is engaged in with or on behalf of other employees, as well as where an employee brings truly group complaints to the attention of management. See *Meyers Industries*, 268 NLRB 493, 497 (1984) (*Meyers I*), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), supplemented *Meyers Industries*, 281 NLRB 882, 887 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988).

In deciding whether an employer's statement or conduct violates Section 8(a)(1), the Board applies the objective standard of whether it would reasonably tend to interfere with the free exercise of an employee's statutory rights, and does not consider the motivation or actual effect. *Midwest Terminals of Toledo*, 365 NLRB No. 158, slip op. at 21 (2017), enfd. 783 Fed. Appx. 1 (D.C. Cir. 2019*); Farm Fresh Company, Target One, LLC*, 361 NLRB 848, 860 (2014).

A. Solicitation of Grievances and Promised Benefits

1. September 2-3 Meetings [¶ 6(f)]

On September 2 and 3, the Respondent held four areawide meetings—two each day—for Buffalo-area employees. In these meetings and the ones to follow, Williams and other corporate officials repeatedly told employees they heard Buffalo needed help and were there to fix whatever problems existed in the Buffalo market. They coupled these statements with assertions about the uncertainties of union representation, and pleaded with employees to vote against representation and give the company more time to fix the problems.

The Williams team opened with presentations about their individual experiences working for the company. Williams spoke about the working conditions that employees should expect at their stores and shifted the focus to the employees. After stating that she made "no promises," Williams did otherwise. She explained that the corporate officials were "looking for themes" and "will take key things back." Williams then asked the employees to share what was going on in their stores and what they liked about their jobs. That produced a flurry of complaints, suggestions, and questions about conditions in their stores. Those issues included understaffing, inability to close channels, insufficient training, supply shortages, pest infestation, and broken equipment. The Williams team promised to follow up on the complaints, suggestions, and questions. At the conclusion, Filc handed out surveys for the employees to express any other concerns they had.

The Board has long held that it is unlawful for an employer to expressly or impliedly promise or grant benefits to its employees during a union campaign because it improperly influences employees' choices. *Pacific FM, Inc., d/b/a KOFY TV-20*, 332 NLRB 771, 772-773 (2000) (employer unlawfully solicited and promised to resolve grievances at mandatory meeting held four days before the election). As such, the solicitation of grievances during the critical period of a union campaign raises an inference that the employer is making a promise to fix them to which an employer can rebut. For the solicitation to be unlawful, however, it must be accompanied by a promise to fix grievances. *Uarco Inc.*, 216 NLRB 1, 2 (1974) ("[I]t is not the solicitation of grievances itself that is coercive . . . but the promise to correct grievances . . . that is unlawful.")

Similarly, the announcement or granting of a benefit during the critical period is also scrutinized to determine whether it was timed to discourage union support. In either case, the Board "will infer that an announcement or grant of benefits during the critical period is coercive," but the employer may rebut the inference with a reason for the timing other than the pending election. *Mercy Hospital Mercy Southwest Hospital*, 338 NLRB 545, 545 (2002); *American Sunroof Corporation,* 248 NLRB 748, 748-749 (1980) (employer can meet this burden by demonstrating that the benefits were expected, part of "an already established company policy" and the "employer did not deviate from that policy upon the advent of the [u]nion."

The approach taken by the Williams team at the September 2 and 3 meetings crossed the line. During the critical period prior to an election, an employer is entitled to present employees with its views on unionization. It may also continue to follow existing practices, including any involving the solicitation or processing of grievances. The Respondent's employees had available online tools and other methods to submit personal and employment-related requests, inquiries, and complaints. Those methods, however, did not entitle corporate officials to solicit grievances during the critical period in the Buffalo market at unprecedented in-person meetings with shift supervisors *and* baristas. See *Wal-Mart Stores, Inc.,* 339 NLRB 1187, 1187 (2003) (employer cannot rely on past practice to justify soliciting grievances during critical period where it "significantly alters its past manner and methods of solicitation), citing *Car-*

bonneau Industries, Inc., 228 NLRB 597, 598 (1977).

Under the circumstances, the Respondent's solicitation of, and promises to resolve, grievances at company meetings on September 2 and 3, violated Section 8(a)(1). *Reliance Electric Company,* 191 NLRB 44, 46 (1971) (employer's explicit promises or implicit promises to "look into" or "review" grievances or "even a refusal to commit Respondent to specific corrective action, does not cancel the employees' anticipation of improved conditions if the employees oppose or vote against the unions.")

2. Camp Road [¶ 6(a)]

Responding to the Union's campaign launch on August 23, Fiscus asked Westlake if he had any suggestions for improvements or repairs at Camp Road. Westlake said he did not but would let Fiscus know if any came to mind. On another occasion in late August, Williams approached Westlake at work. She asked about any issues at the store, as well as suggestions for resolving them. Both instances amounted to unlawful solicitation in violation of Section 8(a)(1).

At Camp Road listening sessions in September, Williams, Peck, and Pusatier addressed concerns previously brought up by employees the week before, explained how they were remedied, and asked if they had any other concerns. On September 9, Peck also mentioned the pending election and expressed the Respondent's commitment to ensure Camp Road employees made a well-informed decision.

On September 10, the Williams team asked Camp Road employees about problems with working and store conditions, and promised to remedy them. The team also discussed why a union would not be a good idea for employees. On September 15, Williams, Peck, and Pusatier updated employees on the improvements currently being made. They also addressed why having a union would not be in the interests of the employees.

The Respondent's solicitation of grievances and promise of benefits during the critical period of the election at Camp Road on the aforementioned dates departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

3. Genesee Street [¶ 6(b)]

On August 24, LeFrois visited Genesee Street and asked employees if they had concerns, needed support, or had any suggestions for improving work conditions. This was an unlawful solicitation in violation of Section 8(a)(1).

The Respondent committed additional Section 8(a)(1) violations during listening sessions at Genesee Street on September 9, 10, and 16. In those meetings, Williams, Peck, and Pusatier continued to solicit complaints, imploring employees to feel safe and share their concerns, and explained the steps being taken to address them. The Respondent's solicitation of grievances and promise of benefits during the critical period of the Genesee Street election on the aforementioned dates departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

At the October 24 meeting, however, the Williams team focused mainly on the voting procedures and reasons why employees should vote against representation. Employees did vent about issues at Genesee Street, but the Williams team did not solicit grievances at this meeting and that allegation is dismissed. [¶ 6(b)(v)]

4. Transit & French [¶ 6(c)]

The complaint alleges that Mkrtumyan and Morton unlawfully solicited grievances and promised benefits at Transit & French in September and October. The allegations are not supported by the evidence and are dismissed. The record reveals that the Williams team solicited employees' concerns and received employee feedback during a mid-September listening session at Transit & French. However, neither Mkrtumyan nor Morton were at that meeting.

Mkrtumyan did attend, along with Pusatier and Cioffi, a listening session at Transit & French in late September/early October. At that meeting, the corporate officials presented a PowerPoint presentation about the Union. However, there is no evidence that the officials solicited grievances or promised benefits at that meeting.

In a late October/early November meeting, Mkrtumyan, Jack Morton, and Cioffi asked employees to fill out sheets detailing areas where they were struggling, areas where they were strong, and areas where they could develop. The officials also presented additional arguments against representation. None, however, solicited grievances or promised benefits.

In or around December, Mkrtumyan met showed Transit & French employees plan drawings for renovations and expansion of employees' work spaces that were to take place in March. This was a continuation of renovation efforts that begin within a month and a half after the campaign launch. Mkrtumyan's actions conveyed a grant of benefits resulting from employee feedback at the September listening session. Accordingly, the Respondent's continuing grant of benefits during the critical period of the election at Transit & French in or around December departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

5. Transit & Maple [¶ 6(d)]

Beginning in early September, Williams, Mkrtumyan, and Murphy made weekly visits to Transit & Maple. On those occasions, they asked employees how things were going and if there was anything they could do. The Respondent's solicitation of grievances and promise of benefits in the midst of an organizing campaign on the aforementioned dates departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

It is also alleged that Peck violated Section 8(a)(1) during a conversation with Emler after a listening session in September. On that occasion, Emler approached Peck and asked about the company's anti-fraternization policy because of her close relationship with a shift supervisor. Peck was sympathetic to Emler's dilemma and replied that she would look into it. She did not promise anything. Therefore, that allegation is dismissed. [¶ 6(d)(ii)]

6. Delaware & Chippewa [¶ 6(e)]

During a late September listening session at Delaware & Chippewa, Mkrtumyan and Murphy solicited employee grievances. Employees responded by sharing concerns their about pay and new employee training. The Respondent's solicitation of grievances and promise of benefits in the midst of an organ-

izing campaign on the aforementioned dates departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

7. Elmwood [¶ 6(g)]

On September 4, Williams thanked Brisack for attending the September 2 listening session, and explained that she was there to follow up on matters brought up at that time, such as carpet replacement and improved training. Those remarks constituted a continuing promise to grant benefits requested by employees.

During listening sessions on September 9, 10, and 19, Williams, Peck, and Pusatier continuously updated Elmwood employees on the remedial actions underway to address their concerns. Those continuing promises related to training, staffing, and facilities and equipment issues. Williams stressed that they were there to address those problems "with immediacy and urgency," in the stores that need it. Pusatier compared the Respondent's ability and willingness to resolve quickly address those concerns to the diminution of its ability to do the same if Elmwood employees were represented by a union.

During a listening session on October 1, Szto updated employees on steps being taken to replace old and broken equipment, eradicate pest issues, increase staff, and improve training. He then told the employees that the company wanted to address any other concerns they might have.

When Elmwood reopened on October 18 after being renovated, several employees commented to support manager Dustin Taylor on the insignificance of the changes. He told them not to worry, referred to it as a "fake remodel," and said the "real one" was scheduled for early spring or later winter of 2022. The complaint alleges that Taylor made these comments in or about November or December. That difference is insignificant where, as here, the matter was fully litigated. See *Sunbelt Rentals, Inc.*, 370 NLRB No. 102, slip op. at 2 n. 8 (2021) (finding 3–4 month date discrepancy regarding an 8(a)(1) threat of futility inconsequential). *Williams Enterprises*, 301 NLRB 167, 168 (1991) (finding 5-month date discrepancy regarding an 8(a)(3) refusal to hire immaterial), enfd. In relevant part 956 F.2d 1226 (D.C. Cir. 1992).

On November 8, one day before mail ballots were mailed to employees, held its final group meeting. Murphy explained that the meeting would focus on the election but not before detailing the remedial actions taken to address employees' concerns.

The Respondent's continuing promises of benefits solicited during the critical period of the Elmwood election on the aforementioned dates departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

8. Orchard Park [¶ 6(h)]

On September 20, Modzel, Pusatier, and Cioffi held a listening session at the Orchard Park At this meeting, Modzel gave an overview of the complaints the corporate officials had been hearing about in other listening sessions, such as understaffing, training, and facilities issues. He explained that the extraordinary measures being taken by the Respondent to remedy those concerns as quickly as possible. Modzel also explained that it was his past practice was to meet with baristas and, based on what they needed, "act immediately." Of course, he was referring to somewhere outside of the Buffalo market, and apologized that it had not received such attention. Pusatier also conceded that Buffalo had been overlooked in the past, and continued to advance the false premise that corporate officials immediately "dropped everything to be here" because they learned that Buffalo-area employees were "hurting."

The Respondent's continued promises of benefits and further solicitation of grievances at Orchard Park in the midst of an organizing campaign on the aforementioned dates departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

9. Williamsville Place [¶ 6(i) and 7(a)]

On September 22, Peck, provided Williamsville Place with an update on the company's actions in the market, "feedback" from the employees about their store, and the "Union threat happening in the market." Modzel updated the Respondent's efforts to address employees concerns relating to understaffing, training, cleaning and renovating stores, and pest elimination. He also asked if there was anything else that needed attention. Peck followed with the same request. Additional concerns were expressed relating to supply shortage, surges in mobile orders when nearby stores closed off that channel, and the cramped work space. Modzel jumped on that suggestion by immediately asking for the store's drawing and schematics. Williams said employees would be provided with design options to remedy the space problem.

On September 28, Modzel updated Williamsville employees on planned renovations for the store, including a drive-through addition which had been planned prior to August 23. The store renovations, however, had not been planned prior to August 23 and were part of the Respondent's plan to bring stores "up to standard" across the Buffalo market.

On October 12, Coloumbe provided an update of the promised improvements. She reported that the employees' wish for a drive-through only location was their command: it was "coming here very shortly." Fenton also described the "aggressive measures" taken to eliminate the store's bee problem, along with "some resets and some cleaning," and "some things coming with refrigeration" to improve the tight backroom area. Fenton, then asked if there was "[a]nything we can do better? Or would you like more? I need this done." Peck also wanted to know: "Anything on your mind at all? Anything you wanted to talk about while we're here?"

Updating employees on the progress of the previously planned drive-through addition to the store was not per se unlawful. However, suggesting to employees that the Respondent was rushing it along was. Those representations, along with the grievances solicited and benefits promised at Williamsville Place in the midst of an organizing campaign on the aforementioned dates departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

10. Transit & Regal [¶ 6(j)(i)-(iii)]

The complaint alleges that Transit & Regal store manager Jodi Keller and support manager Tanner Reese solicited employee grievances and promised benefits on or about August 24. The record bears no evidence of such an event. Allegation [¶ 6(j)(i)] is dismissed.

On September 22, Pusatier asked Transit & Regal employees at a listening session to describe their experiences working for the Respondent and any problems in their store. Responding to employees' complaints about understaffing, supply shortages, and difficulties with mobile orders and customizing drinks, Pusatier said the Respondent was there to fix their problems.

During a September 29 listening session, , Christopher Stewart, a partner resource manager, talked about the ramifications of unionization. Modzel spoke about the disadvantages of unionization in contrast to the company's preference for a partner-to-partner approach in resolving employees' problems. Neither solicited grievances nor promised benefits. Allegation [¶ 6(j)(iii)] is dismissed.

The Respondent's continued promises of benefits and further solicitation of grievances at Transit & Regal in the midst of an organizing campaign on September 22 departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

11. Transit Commons [¶¶ 6(k) and 7(c)]

During a listening session at Transit & Commons on a date in September, Modzel invited employees to share their concerns: "And if there's more, we're listening . . . And I can give you countless examples of how when out partners have spoken up, we show up and we do something about it." Williams and Pusatier followed with updates in resolving employees' complaints about the ice machine. Williams told employees to call Pusatier if the district manager did not fix their problems. If that did not fix it, they should then call Peck. Finally, she told them they could call her directly if that did not work.

The Respondent's continued promises of benefits and further solicitation of grievances at Transit Commons in the midst of an organizing campaign on a date in September departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

The complaint also alleges that Transit Commons store manager David Almond essentially granted a benefit by informing employees in October that the seniority-based wage increases were granted in response to the organizing campaign. On that occasion, however, Almond was merely expressing his opinion to Sanabria. Moreover, when called as a witness, he was not asked to explain the basis for his opinion. Accordingly, allegation ¶ 7(c) is dismissed.

12. Sheridan & Bailey [¶ 6(l)]

The complaint alleges that Pusatier, Szto, and an unknown agent solicited grievances and promised benefits at Sheridan & Bailey on September 22. However, there is no evidence of a listening session on that day. There was a listening session at Sheridan & Bailey on September 30 but that meeting mostly deal with questions about health care. Allegation [¶ 6(l)(i)] is dismissed.

During a listening session at Sheridan & Bailey on December 16, Szto opened the floor to questions and comments. Employees voiced concerns about pay, benefits, and inadequate training. Pusatier and Szto explained that those concerns were already being addressed in the Buffalo market based on feedback from Buffalo-area employees. Szto added "that we have decided that we really need to make sure that we hear something's not going well, that we are listening and doing what we can to make things better." Before the meeting concluded, Szto recapped the Respondent's actions in the Buffalo market, including equipment changes and facility improvements, and assured them that there was more to come.

The Respondent's continued promises of benefits and further solicitation of grievances during the critical period of an election at Sheridan & Bailey on December 16 departed from its previous practices in the Buffalo market and, thus, violated Section 8(a)(1).

13. Main Street

Sometime in September or October, Main Street store manager Julie Almond informed employees about company mental health benefits that were already available to them. She also told them that mental health counselors would be available to employees at the store on certain dates and times. Given the absence of evidence as to whether in-store services mental health services were a new or additional benefit granted after August 23, this allegation is dismissed.

B. Additional Promises and Grants of Benefits

1. The Seniority-Based Wage Increase [¶ 7(e), (v)]

On July 28, 2021, prior to the organizing campaign, the Respondent announced it was moving up planned January nationwide pay increases to October 4. The pay scales were to increase by at least 5% for employees hired prior to July 2021, and 6% for "tenured" employees. On October 27, the Respondent announced a revision to the January pay increases. Employees with at least two years of service "could receive up to 5%" and those with at least 10 years of service "could receive up to a 10% raise."

The Respondent contends that the October 27 announcement was lawful because it only stated that employees "could" receive the pay increases. While the announcement did not indicate specific amounts that employees would receive in January, it revised its July 28 plan in two respects. First, the planned increases of "at least 5%" for new employees (hired before July 2021) became "up to 5%" and was to require two years of service. Second, the increased pay scales for "tenured" employees was clarified to be those with at least 10 years of service and the pay scale was revised from "at least 6%" to "up to $10%."

The October 27 announcement increasing pay scales clearly deviated from the company's compensation plan for 2022. Coming in the midst of the organizing campaign, with dozens of listening sessions where tenured employees complained about the lack of seniority-based wage increases—it is inferred that the announcement was coercive. The burden then shifted to the Respondent to demonstrate that the announcement was not due to union activity. *STAR, Inc.,* 337 NLRB 962, 962 (2002) (employer may rebut inference that grant of benefits during critical period is coercive "by establishing an explanation other than the pending election for the timing of the announcement or bestowal of the benefit."); see also *Onan Corp.*, 338 NLRB 913, 915 (2003) (employer had the burden to prove that announcement would have come at the time in question with or without a union campaign).

The Respondent failed to meet its burden to show that the

October 27 promise to further revise previously announced pay scales, effective January, was due to a business reason other than the Buffalo-area organizing campaign. The announcement referred to the company's "continued commitment to listen, learn together, and deliver real, measurable value to partners, customers and shareholders. The investments the company will be making will enhance wage, training and in-store experiences, nationwide." That explanation, however, did little to disassociate the action from the campaign. To the contrary, those enhancements were the very terms and conditions that employees expressed concerns about during the Fall 2001 listening sessions. See *Mercy Hospital Mercy Southwest Hospital*, 338 NLRB at 546 (inference of coercion not rebutted by employee who was not involved in decision relating to timing of announced pay increases).

In January, some long serving employees, such as Delaware & Chippewa shift supervisor Iliana Gomez, received a first-time seniority-based pay increase. Others, such as Eisen, did not. By lifting the pay scale for tenured employees, the Respondent remedied an issue raised during listening sessions and granted employees a major benefit. Although the increase was national in scope, the only evidence of employee dissatisfaction over pay issues is found in the Buffalo listening sessions.

Under the circumstances, the Respondent's October 27 nationwide announcement increasing the pay scales of tenured employees—less than two weeks before three representation elections—promised a major benefit, while the January seniority-based pay increase granted that benefit, both in violation of Section 8(a)(1). *The Guard Publishing Company, d/b/a The Register Guard,* 344 NLRB 1142, 1142 (employer unlawfully announced wage increases hours after informing employees that it just learned they were discussing union representation)

2. The November 6 Meeting [¶ ¶7(f)-(g)]

On November 6, during an all-Buffalo partner meeting in November, Schultz mentioned at the outset that he learned about problems in the Buffalo market in October and instructed the managers to resolve them. He devoted the rest of his presentation to his background, the history of the company, the wide-ranging benefits it offered its employees, and the innovations underway for the benefit of employees. Schultz also described his continuing commitment to employees by leaving an empty chair representing them at Board of Directors meetings. He made no mention of the three representation elections to be held three days later or the other stores that had filed petitions. After Schultz concluded, Peck restated the company's promise to solve the problems in their stores: "And again, we haven't gotten this right. But we are absolutely, we're up with everything we have to get this right for you, and for each other."

By assuring employees that their concerns over working conditions would be addressed and subsequently making large scale operational changes, infra, (i.e., increased hiring, improved training practices, and facility improvements), the Respondent was making an implied promise. *Pennsy Supply*, Inc., 295 NLRB 324, 325 (1989) (statements that improved health and retirement plans were under consideration unlawfully conveyed an implied promise to improve working conditions) . Cf. *Radio Broad. Co.*, 277 NLRB 1112, 1113 (1985) (no unlawful promise in the absence of the employer taking any steps to implement it).

Under the circumstances, the Respondent's promise to remedy employee grievances on November 6—just three days before three area elections—coerced employees in violation of Section 8(a)(1) of the Act. *American Freightways, Inc.*, 327 NLRB 832, (1999)(employer unlawfully replied to employees' concerns at preelection meeting by stating that "we would fix the problems, and we don't need a third party to intervene.")

3. The Hiring of New Employees [¶¶ 9(b)-(d)]

During September listening sessions held in stores, employees included understaffing in laundry lists of complaints requested by and shared with the company. The Williams team acknowledged the problem and promised to accelerate the process of adding new employees, but noted that the problem was exacerbated by excessive call outs at certain stores. As a result, some stores had to close early, operate with limited functioning channels, or not open at all.

The Respondent came through with a hiring blitz that not only ameliorated understaffing concerns, but actually caused overstaffing in certain several stores. Certain stores, including Genesee Street experienced overcrowding on the floor. In October, that problem worsened after employees from the NFB store were reassigned to Genesee Street while their store was undergoing an extensive renovation. As previously explained, NFB employees were sent to Genesee Street during repairs to their store even though there were 10 other stores closer to NFB. Notably, when Genesee Street was itself closed for a renovation, the employees were not sent to work at NFB.

Prior to September, shift supervisors would have been able send some employees home if they were not needed. However, when Rizzo tried to send employees for that reason, she was instructed to keep them on the clock and find something for them to do. As a result, NFB store employees were able to accrue enough hours to vote in the Genesee Street election. The NFB employees were largely uninterested or even hostile to the idea of a union. Although employees from Walden & Anderson store—who were much more prounion—were also assigned to Genesee Street, only NFB employees accrued enough hours there to be added to the Genesee Street voter list and participate in that store's election.

The Respondent's overcrowding of stores had a dual effect. First, after soliciting grievances at September listening sessions, the Respondent's granted employees a benefit by satisfying the requests of some for more staff at their stores. At those meetings, employees shared numerous examples of being overwhelmed because their stores were short-staffed. Second, the excessive staffing effectively "packed" the Genesee Street unit by diluting the proportion of that store's mostly prounion employees who were able to vote in the mail ballot election from November to December.

Under the circumstances, the Respondent unlawfully granted benefits and packed the Genesee Street unit in violation of Section 8(a)(1). See, e.g., *Einhorn Enterprises, Inc.*, 279 NLRB 576 (1986), *Regional Home Care, Inc.*, 329 NLRB 85 (1999); *Golden Fan Inn*, 281 NLRB 226, 229 (1986) ("cases involving unit packing frequently turn on circumstantial evidence."); cf.

Wal-Mart Stores, Inc. 348 NLRB 274, 279 (2006) (transfer of three employees into meat market of store due to staffing needs was not unlawful).

4. Centralized Training [¶¶ 9(a), (s), (u)]

Prior to September, Buffalo-area stores were responsible for training newly-hired employees, a job that usually fell to barista trainers. In September, employees complained at listening sessions about the inadequate training of new employees, understaffing, and overwhelmed store managers. In response, training was transferred from individual stores to one central location, and later to two additional stores. In November, two additional stores were designated as central training facilities.

As a result, barista trainers such as Westlake and Cochran lost training opportunities and bonuses that came along with them. The Respondent asserted that this approach, which existed at about 40 other locations around the country, helped to alleviate some of the burden on understaffed stores, while enabling the Respondent to quickly train new employees.

In numerous cases, however, centralized training proved to be inadequate and new employees had to be retrained once they got to their home store. At Walden & Anderson, the new employees did not interact with live customers, learn to operate ovens, or work the drive-through channel. As a result, barista trainers and others ended up mentoring and retraining them without additional compensation for their effort.

This initiative was announced by the Respondent as another component in its comprehensive plan to ameliorate employee concerns in the Buffalo area. Accordingly, the implementation of centralized training in September and November in order to fulfill the Respondent's promises to employees granted them benefits in violation of Section 8(a)(1).

On the other hand, there is no evidence that this benefit, which it has utilized elsewhere, was granted with the additional motive of withdrawing benefits from barista trainers in violation of Section 8(a)(3). Many of the employees trained at the central locations did require additional on-the-job training and mentoring once they arrived at their home stores. However, the Respondent's assertion—that the centralized approach was the quickest way to augment the additional hiring promised—was not disputed. Accordingly, allegation ¶12(i)] is dismissed.

5. Store Improvements [¶¶ 9(e), (l)-(m)]

In response to the Respondent's solicitation of grievances by corporate officials during September listening sessions and visits to stores in August and September, employees often mentioned facility-related issues. These problems included inadequate or inefficient store spaces or layouts, damaged counters, flooring, and structural components, broken or outdated equipment, and pest issues. Store managers and other employees explained that requests for repairs or improvements were often ignored or took excessive amounts of time to address. As previously explained, the Williams team assured employees that they would fix the problems.

The Respondent typically planned renovations 12 to 18 eighteen months in advance. Between September and January, however, the Respondent fast-tracked that process with a wide-ranging operation of store improvements and repairs. Most of the aforementioned facility improvements were neither requested nor planned prior to September. With respect to those that were already requested, they had been pending for some time. In any event, there is scant evidence that such work would have been performed prior to January but for the organizing campaign.

During that period, 14 stores underwent renovation: Camp Road, Transit & French, NFB (September); East Robinson, Transit Commons, Genesee Street, Transit Regal, Sheridan & Bailey, Elmwood, Williamsville Place, and Transit & Maple (October); McKinley and UB Commons (December); and Delaware & Chippewa (January). Additionally, stores were deep cleaned, treated for pest infestation, and had damages repaired and equipment upgraded. Those stores included Elmwood (carpet replacement), Sheridan & Bailey (upgraded equipment), UB Commons (signage and pest issues), Orchard Park (broken awning), and Camp Road, Walden & Anderson, and Main Street (pest issues).

The Respondent was certainly entitled to follow its existing practices to ensure that its stores met its standards, were customer-friendly, safe, and operationally sound. *Wal-Mart Stores*, 348 NLRB 274, 282 (2006) (employer did not violate Section 8(a)(5) by making needed repairs and improvements without bargaining with union); *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 674 (1981) (capital investments are core business decision). However, that is not what happened in Buffalo. Beginning in September, the Respondent rolled-out an extraordinary plan to respond to facility-related complaints by employees in the midst of a union campaign. The initiatives were hardly undertaken in the course of the Respondent's regular course of business practices in the Buffalo market. Capital improvement projects suddenly cropped up and Claytor, a facilities manager, was dispatched by Nelson to get everything fixed. These actions would not have transpired but for the organizing campaign and pending elections.

Under the circumstances, the Respondent's September-January massive renovation and repair operation performed in response to the Union campaign unlawfully granted employees a benefit in violation of Section 8(a)(1). See *Spengler-Loomis Mfg. Co.*, 95 NLRB 243, 244-245 (1951) (employer's facilities improvements, when made in response to union activity, were unlawful); *U Save Foods d/b/a Sun Mart Foods,* 341 NLRB 161, 163 (2004) (remodeling of store was unlawful where the Respondent viewed it as a benefit to employees), citing *Comcast Cablevision of Philadelphia, L.P.*, 313 NLRB 220, 250 (1990).

6. Disabling Mobile Ordering, and Closing Cafes and Stores [¶¶ 9(f), (i)-(j), (t)]

Prior to September, the Respondent's policy for disabling mobile ordering and closing either the café or store entirely required approval by the store and district managers. Notwithstanding that policy, some shift supervisors took it upon themselves to disable mobile ordering or close the café or store, if necessary, and if they were unable to reach the store manager. During the listening sessions, the Williams team heard numerous complaints from shift supervisors about the stress caused by their inability to take any of those actions whenever they were short-staffed or overwhelmed. The Respondent granted

these requests to shift supervisors for periods of time at certain stores, including Main Street, Camp Road, Walden & Anderson, and East Robinson. By doing so, the Respondent granted employees in short-staffed stores benefits by reducing store operations, as necessary, thereby relieving employee stress. Accordingly, these actions amounted to grants of benefits in violation of Section 8(a)(1).

7. Removal of District Managers, Store Managers, and Others [¶¶ 9(k), (n)-(o, (q))]

The complaint alleged that the Respondent remedied grievances it solicited and granted benefits by removing and replacing: (1) the two district managers, LeFrois and Young in September; (2) Fiscus, the Camp Road store manager, and Wright, the Genesee Street store in September; and (3) removing an employee from Transit & French in October.

Employees did complain that to the Williams team during their visits and listening sessions about rarely or only briefly seeing a district manager in their stores. Additionally, Camp Road and Genesee Street employees complained to the corporate officials about Fiscus and Wright. Finally, Transit & French employees filed complaints with their store manager and the ethics and compliance department accusing Caravata, a shift supervisor, of serious misconduct.

The preponderance of the evidence did not establish that any of these separate allegations amounted to an unlawful grant of a benefit. The employee complaints about the district managers and store managers resulted from the Williams team's unlawful solicitation of grievances and are subsumed by those Section 8(a)(1) violations. Moreover, although employees complained about these managers, there was no evidence that anyone asked for any of them to be replaced. Nor was there evidence establishing whether and, if so, how their removals placated employees.

With respect to Caravata's separation for serious misconduct, the evidence revealed that an ethics and compliance investigation had been underway for just two weeks when Mkrtumyan spoke to Krempa about her complaint. Although the investigation concluded shortly thereafter and Caravata was separated, there is no evidence that Mkrtumyan did anything to accelerate that process. Under the circumstances these allegations are dismissed.

8. Additional Work Hours [¶¶ 9(g)-(h)]

Prior to September, employees who wanted to work overtime at Transit & French would ask Tollar, the store manager, who would get approval from the district manager. That changed during the last week in August, when Tollar informed employees that the store was allotted more labor hours. He told employees to contact him if they wanted more hours, and added that employees could create their own hours.

Prior to August 23, the Respondent allotted a specific amounts of labor to each Buffalo-area store based on the company's revenue forecasting system. By the middle to latter part of September, Transit Commons available labor hours suddenly increased by 60 hours every week. David Almond, the store manager, was never given a reason for the changed allotment.

The Respondent asserts that the extra hours were allotted so stores could accomplish the resets that it promised employees and to bring stores up to standard. That explanation was not credible, since there is no evidence that additional hours were needed for remodeling, deep cleaning, or anything else—certainly not within a week of the campaign launch. Neither Almond in his testimony nor Tollar in his message indicated that the extra hours were for anything other than regular shift work. The fact that Almond and Tollar were suddenly allotted the additional hours without explanation—indefinitely—by corporate management just as the organizing campaign was getting started—is highly indicative of an effort to grant employees benefits in response thereto. By granting employees the opportunity to work additional hours during the pre-election period, the Respondent's action had a "tendency to influence the outcome of an election" and violated Section 8(a)(1). *Gulf States Canners, Inc.,* 242 NLRB 1326, 1326-1327 (1979), enfd. 634 F.2d 215 (5th Cir. 1981), cert. denied 452 906 (1981); cf. *Jam Productions, Ltd*., 371 NLRB No. 26, slip op. at (2021) (union's assignment of additional work referrals to stagehands not unlawful where there were legitimate business reasons for doing so).

9. Additional Training [¶ 9(p)]

During a conversation with Mkrtumyan after a listening session in October, Krempa mentioned that, although she had been promoted to shift supervisor seven months earlier, she had never finished training. Krempa explained that she made repeated requests to her store manager to be allowed to do so. Shortly after that conversation, Krempa received additional training. The fact that Krempa initiated the request and Mkrtumyan granted it misses the point. Krempa went through normal channels by asking her manager to arrange for her to complete training but was unsuccessful. The fact that Mkrtumyan was now an available resource to remedy Krempa's problems was a departure from past practice in the Buffalo area. By doing so, the Respondent granted Krempa a benefit in violation of Section 8(a)(1).

10. Schedules [¶ 9(r)]

At some point in October, Rizzo approached Williams and Rizzo complained that work schedules were not being posted in the store. As soon as the next schedule was ready, it was posted in the back room. The fact that Williams was now an available resource to remedy Rizzo's problems was a departure from past practice in the Buffalo area. By doing so, the Respondent granted Genesee Street employees a benefit in violation of Section 8(a)(1).

C. Pre-Election Meetings [¶ 10(a)]

The complaint alleges that the Respondent's listening sessions were "mandatory or effectively mandatory captive-audience meetings for employees of its Buffalo facilities to discourage union activity." Beginning in September and continuing into 2022, Williams and other corporate officials met with employees, both in groups and individually. As previously detailed, these officials solicited grievances, promised to remedy them, promised further benefits, highlighted the uncertainties and disadvantages of union representation, and loss of the "partner-to partner" relationship employees had with the company, and threatened changes to desirable terms and condi-

tions of employment if employees brought in the Union.

Employees were paid for attending the meetings. The September 2 and 3 meetings were indisputably voluntary, With respect to individual stores meetings that followed, some were reasonably construed by employees as mandatory because their managers scheduled them to attend—even if they were not otherwise scheduled to work, they received individually addressed invitations, or were being paid for attending. In addition, some employees were told by their store managers that the meetings were mandatory, they would be disciplined if they did not attend, and/or they would be required to attend a make-up meeting. Others employees, however, considered the meetings to be voluntary. Although no one was disciplined for failing to attend a group meeting, the reality is that certain employees reasonably relied on their managers' statements threatening such action.

The Respondent's representatives took a similar tack in individual meetings with new employees. For example, the Elmwood store manager and a support manager pulled Wittmeyer, a new employee, off the floor to meet with them. At a table in the café, they encouraged her to consider "her relationship with the company and vote against representation. They asked her to give the company a chance to satisfy employees concerns and, if they did not, Whittmeyer could vote for the Union a year later.

Section 8(c) of the Act gives employers the right to educate its employees about labor organizations, collective bargaining, and the Act:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act if such expression contains no threat of reprisal or force or promise of benefit.

For over 75 years, Board precedent has interpreted Section 8(c) as entitling employers to lawfully compel employees to attend individual or group meetings in which it urges them to reject union representation. *Babcock & Wilcox Co.,* 77 NLRB 577, 578 (1948). See also *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969) (confirming employer's right of free speech to communicate its views on unionization to employees). Free speech, however, does not encompass unlawful speech. Id. at 618. (an employer is "free to communicate to [its] employees any of [its] general views about unionism or any of [its] specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.'")

Beginning on September 2 and continuing through January, corporate officials and managers scheduled and required witnesses to attend meetings where they shared their views of the Union. However, they blended those conversations with unlawful threats, solicitations, and promises. While those statements have already been determined to constitute separate violations of Section 8(a)(1), the General Counsel seeks an independent violation based on the Respondent's requirement that employees attend these meetings.

Recognizing that *Babcock & Wilcox Co.* allow employers to compel employees to attend union-related meetings, the General Counsel urges the Board "to conclude that captive audience meetings regarding the exercise of Section 7 rights are per se unlawful." Arguing that such gatherings are inherently coercive, she asks the Board to reaffirm its earlier ruling in *Clark Bros. Co.*, 70 NLRB 802, 804-805 (1946), where it held it unlawful for an employer to compel employees to attend union-related meetings during work time. In doing so, the General Counsel urges the Board to find it inherently coercive for an employer to infringe on an employee's Section 7 rights to refrain from listening to their employer's communications in two circumstances: when they are (1) convened on paid time or (2) cornered while performing their job duties.

Of course, overruling Board precedent is beyond the role of an administrative law judge. Accordingly, the allegation that the Respondent's mandatory group and individual union-related meetings constituted a separate Section 8(a)(1) violation is dismissed.

D. Threats and Coercion

In determining whether a threat violates Section 8(a)(1), the Board applies an objective standard as to whether the remark reasonably tends to interfere with the free exercise of employee rights, and does not look at the motivation behind the remark. *Divi Carina Bay Resort*, 356 NLRB 316, 320 (2010), enfd. 451 Fed. Appx. 143 (3d Cir. 2011); *Joy Recovery Technology Corp.,* 320 NLRB 356, 365 (1995), enfd. 134 F.3d 1307 (7th Cir. 1998); *Miami Systems Corp.*, 320 NLRB 71, 71 fn. 4 (1995), affd. in relevant part 111 F.3d 1284 (6th Cir. 1997); *Midwest Terminals of Toledo*, 365 NLRB No. 158 (2017). When applying this standard, the Board considers the totality of the circumstances. *Mediplex of Danbury*, 314 NLRB 470, 471 (1994). The threats in question need not be explicit if the language used by the employer or his representative can reasonably be construed as threatening. *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970). When applying this standard, the Board considers the totality of the relevant circumstances. *KSM Industries,* 336 NLRB 133, 133 (2001). In specifically assessing whether a remark constitutes a threat, the appropriate test is "whether the remark can reasonably be interpreted by the employee as a threat." *Smithers Tire*, 308 NLRB 72 (1992). Further, "It is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed." *American Tissue Corp.*, 336 NLRB 435, 441-42 (2001) (citing *NLRB v. Illinois Tool Works*, 153 F.3d 811, 814 (7th Cir. 1946)).

1. Loss of Benefits 15 [¶¶ 10(b)-(g)]

During the September 15 meeting with Camp Road employees, Williams, Peck, and Pusatier told employees that they would lose certain benefits that they currently enjoyed if they were represented by the Union and covered by a collective-bargaining agreement: store managers would no longer be able to help them on the floor; employees would lose the partner-to-partner relationship they had with management; employees would lose the right to pick up shifts at other stores; and the Respondent would not be able to offer additional benefits to

employees during the term of a contract.

Around late August, Shanley warned Brisack that she would not be able to help baristas on the floor anymore if they brought in the Union. Brisack disagreed but Shanley replied that employees did not know what would be negotiated and would be "shooting ourselves in the foot. The corporate executives continued the threats at meetings with Elmwood employees on September 10 and 19.[441] In those meetings, Williams, Peck, and Pusatier warned that bringing a union between them would not be a "good fit," would result in a loss the direct relationship they had, and diminish its ability to resolve problems in the Buffalo market. On November 8, Nelson asked Elmwood employees "to vote to keep the direct relationship with," thereby implying a loss of the Respondent's ability to help employees with their problems.

During the September 16 meetings with Genesee Street employees, the Williams team repeated similar warnings. Williams told employees that union representation would "change in how you're employed with us" and would cause them to be treated differently from unrepresented store employees as it related to their pay and benefits. She also stated that represented employees would not be eligible for extra benefits, such as service pay, if the company suddenly decided to award them prior to the end of the contract. Pusatier told employees that they would lose the ability to transfer to or pick up shifts at unrepresented stores or have employees from those stores come to help them out.

During the September 28 meeting with Williamsville Place employees, Fenton made a similar statement that a union contract could cause employees to lose their ability to transfer to or pick up shifts at other stores. Moore disputed Fenton's representations regarding the effect that a contract would have on existing practices.

The aforementioned statements by corporate officials and managers threatened employees with the loss of benefits or adverse changes to their working conditions if they selected the Union as their bargaining representative. See, e.g., *Horseshoe Bossier City Hotel & Casino*, 369 NLRB No. 80, slip op. at 1 fn. 10, fn. 15 (2020), citing *Larid Printing, Inc.*, 264 NLRB 369, 369 (1982) (employer violated Section 8(a)(1) by informing employees that they could no longer ask for a last-minute day off if they unionized). These officials made these representations without any objective facts to back them. Union supporters often disputed these statements but the officials and Shanley held firm. See *BP Amoco Chemical-Chocolate Bayou*, 351 NLRB 614, 617 (2007), quoting *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969) ("employers may make statements to their employees that predict economic consequences of unionization, so long as the prediction is 'carefully phrased on the basis of objective fact to convey [its] belief as to demonstrably probably consequences beyond its control.'"

Under the circumstances, these statements violated Section 8(a)(1) by threatening employees with the loss of existing benefits and leaving them "with the impression that what they may ultimately receive depends in large measure on what the Union can induce the employer to restore.") W*ebco Industries*, 327 NLRB 172 fn. 4 (1998), enfd. 217 F.3d 1306 (10th Cir. 2000), quoting *Plastronics Inc.,* 233 NLRB 155, 156 (1977);

The complaint also alleges that an unidentified agent threatened Main Street employees in or about late September with the loss of the following benefits if they were represented by the Union: loss of the direct relationship between them, the inability of managers to assist them on the floor, and loss of the right to pick up shifts at other stores. Cory Johnson testified about a September meeting where the Respondent discussed the voting process. However, he did not mention anything about the impact that bringing in the Union would have on its relationship with employees. Accordingly, allegations ¶ 10(c)(iv), (d)(i), and(e)(ii) are dismissed.

2. Threatened Discipline [¶ 10(h)]

In early September, Transit & Maple employee Madison Emler told Williams about employees' concerns that her store manager, DePonceau, was enforcing the company's COVID protocol. She also told Williams that she previously mentioned these concerns to DePonceau, but nothing had been done. Several days later, DePonceau admonished Emler for speaking with Williams. He told her that she needed to bring any concerns she had to him and no one else. DePonceau warned that if he she did it again he would discipline her. By interfering with Emler's protected concerted right to share employees' concerns over their health and safety with higher level management officials the Respondent violated Section 8(a)(1).

3. Coercion and Threats at East Robinson [¶[¶ 10(i)-(j), (o), q)]

Beginning around late August, Clark and Conklin spoke often about their opposition to unionization. During those conversations, Clark instructed Conklin not to allow union supporters to take shifts at East Robinson because they might cause employees to support the Union. Clark also asked Conklin for updates on two Union supporters, Kayla Sterner and Nathan Tarnowski. In January, after Conklin changed her mind and decided to support the Union, Clark stopped talking to her. By late January, Clark was accusing Conklin of lying about a coworker sexually harassing her and trying to get her coworkers to go out on strike against her. Later in February, Clark, along with another store manager, pulled Conklin into a meeting where Clark accused her of gossiping and trying to turn employees against her. She also warned that she could get Conklin in trouble based on everything she knew. The aforementioned requests to surveil and discriminate against union supporters, and threats all interfered with Clark to engage or refrain from union and other protected concerted activity and, thus, violated Section 8(a).

4. Minimum Availability Requirement [¶ 10(k)]

In October, Delaware & Chippewa store manager Hunt told Gomez and the other shift supervisors that they needed to revise their scheduling availability to be available for at least one weekend shift. Gomez, who regularly worked weekdays only, rejected Hunt's refused to comply with the new minimum re-

[441] The complaint alleged that the Elmwood statements were made on or about September 15 and 19. However, the transcript of the first meeting reflects that it took place on September 10. There was no meeting on September 15.

quirement. The requirement that shift managers make themselves available on weekends was certainly onerous for employees who preferred not to work those shifts. However, the General Counsel and Union failed to advance a theory as to how such a requirement interfered with employees' Section 7 rights. Accordingly, ¶ 10(ki) is dismissed.

5. Prohibiting Protected Speech [¶¶ 10(l), (n)]

On separate occasions in October and November, support manager Ashley Justus admonished Genesee Street employees for speaking during work time with customers about the Union. She admonished Rizzo in October for taking herself and coworkers out of position to speak with Transit & Regal employee Brian Murray. In November, Justus pulled Dragic, who briefly interacted with Murray about the Union, and told her she was spending too much time talking to her friend. Justus relented after Dragic pushed back, commenting that she knew "you guys have your thing, but you can't be having conversations when we have things to do." In December, another support manager, Joanna Hernandez, walked behind Rizzo and another employee as they talked to about the Union, and asked if there was anything better that they could be doing in that moment. By prohibiting employees from engaging in union-related speech while allowing other nonwork speech during work time, the Respondent interfered with their Section 7 rights in violation of Section 8(a)(1). *Industrial Wire Products, Inc.*, 317 NLRB 190, 190 (1995) (prohibiting employees from talking about the union on company time while allowing other discussions a violation).

6. Refusing to Hire Employees [¶ 10(m)]

The complaint alleges that the Respondent has refused to hire employees at Elmwood since October 24. Prior to that date, Elmwood had about 29 total hourly employees, and needed just 8 employees during peak shift and 4-5 employees during non-peak time. On October 24, the Respondent assigned six new hires and one transfer to Elmwood—even though Eisen and Brisack told the Williams team during meetings that the store was sufficiently staffed. Between that date and June, Elmwood lost 19 employees and transferred in two employees. Employee attrition at Elmwood got so bad during Spring 2022 that one call-off resulted in the store closing because there would not be enough staff to operate the store. In June, the store hired three baristas, bringing the number of total hourly employees to 23.

The evidence failed to demonstrate that the Respondent's refusal or failure to augment its staffing between October and June coerced or interfered with employees' Section 7 rights. The store lost 19 employees during that period and there is no evidence whether the Respondent caused that decline with separations or transfers, or if the employees just left the company. Moreover, Elmwood was able to operate, according to Eisen's testimony, with 12 or 13 employees on any given day. Accordingly, allegation ¶ 10(m) is dismissed.

7. Loss of Pay Increases [¶ 10(p)]

On February 8, Delaware & Chippewa support manager Heather Dow told an employee that she had been in a union and employees did not know what they getting into. She referred to the example of employees in one of the Respondent's Canadian stores that unionized and had not received pay increases given to employees in all of the other Canadian stores. Dow provided no further details in comparing the Buffalo stores to Canadian stores. By suggesting employees in a unionized store might not receive a financial benefit that employees in nonunion stores enjoyed, Dow engaged in coercive activity in violation of Section 8(a)(1).

E. Surveillance

In determining whether an employer's surveillance violates Section 8(a)(1), the Board applies the following objective test: whether the employer's conduct, under the totality of the circumstances, would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under Section 7. *Sage Dining Services, Inc.*, 312 NLRB 845, 856 (1993); *Brown Transportation Corp.*, 294 NLRB 969, 971-972 (1989). Managers are permitted to "observe open and public union activity on or near the employer's premises", but not in a way that is out of the ordinary and thereby coercive. *See Partylite Worldwide, Inc.*, 344 NLRB 1342 (2005), citing *Arrow Automotive Industries*, 257 NLRB 860 (1981). *See also Aladdin Gaming, LLC*, 345 NLRB 585, 585-586 (2005), petition for review denied 515 F.3d 942 (9th Cir. 2008). The Board considers indicia of coerciveness, which include the duration of the observation, the employer's distance from its employees while observing them, and whether the employer engaged in other coercive behavior during its observation. *Aladdin Gaming*, supra at 586.

1. Repeated Surveillance by Corporate Officials and Support Managers [¶¶ 8(b)-(d)]

By late August and early September, Williams and a legion of corporate executives began making unprecedented visits to all 21 stores. They stayed at the stores anywhere between 10 minutes and several hours. The executives asked employees about their experiences with the company, asked about their concerns and suggestions, observed them while they worked, and helped out. By September, the Respondent also stationed support managers in most, if not all, stores, ensuring that they or a store manager were always present during operating hours. This departed from the Respondent's prior practice where store managers, who worked about 40 hours per week, were not always in the store during operating hours. Managers were also told to look out for and tamp down union-related discussion.

The Respondent contends that there is a lack of evidence that Williams, other corporate officials, and support managers. engaged in surveillance, The complaint, however, alleges otherwise—that the Respondent's actions created an impression among employees that their union activities were under surveillance. The Board's test for determining whether an employer has created an impression of surveillance is whether the employee[s] would reasonably assume from the [action] in question that [their] union activities had been placed under surveillance. *Tres Estrellas de Oro*, 329 NLRB 50 (1999), *citing United Charter Service*, 306 NLRB 150 (1992).

Additionally, the Respondent contends that the corporate officials and support managers were simply doing their job by visiting or working at the stores, jobs that they previously did

elsewhere. That argument fails, however, since the Respondent did not have a previous practice of sending these officials to Buffalo. Respondent's officials rallied to Buffalo only because of the Dear Kevin letter. See *Partylite Worldwide, Inc.*, 344 NLRB 1342, 1342 (2005), citing *Arrow Automotive Industries*, 257 NLRB 860 (1981) (management officials may lawfully "observe open and public union activity on or near the employer's premises," so as long as they "do not engage in behavior that is out of the ordinary.")

Williams and the other corporate officials repeatedly visited the stores and spent considerable amounts of time speaking to and working alongside employees. The support managers, sometimes two or three in the store at the same time, enabled the Respondent to provide, for the first time, a managerial presence in stores during operational hours. They worked alongside employees or on laptops in the café. These were highly unusual events for Buffalo-area employees, nearly all of whom had never met any of these high-level officials.

Coupled with the timing of these unprecedented practices in the midst of an organizing campaign, the corporate officials created the impression that their union activities were under surveillance. While the evidence revealed that employees openly engaged in union activities, there is also abundant evidence regarding the stifling of such discussion due to the presence of these officials and support managers. Under the circumstances, the Respondent's conduct violated Section 8(a)(1). See *Charter Communications, LLC*, 366 NLRB No. 46 (2018), enfd. 939 F.3d 798 (6th Cir. 2019) (employer unlawfully created impression that prounion employee's activities were being monitored by high-level manager who rode along with him for the first time); cf. *Wal-Mart Stores, Inc.,* 350 NLRB 879, 883 (2007) (the monitoring of openly-conducted union activities by management officials does not create an unlawful impression of surveillance).

2. Photographing Employees [¶ 8(a)]

On August 24 or 25, David Almond held his phone out in Sanabria's direction and photographed him as he worked in the drive-through station. Sanabria was wearing his Union pin. The incident occurred a day after Sanabria's name appeared on the Dear Kevin letter and was highly unusual. Coupled with the Respondent's proven union animus, the action created the reasonable impression that Sanabria's union activities were under surveillance in violation of Section 8(a)(1). See *Rogers Electric Inc.*, 346 NLRB 508, 509 (employer created an impression of surveillance when it openly monitored employees' protected activity in a manner that was "out of the ordinary").

3. Headsets [¶ 8(g)]

At Camp Road, Transit & French, Genesee Street, and Sheridan & Bailey, support managers were constantly present and wore headsets and were able to monitor employee communications, even when off the floor. On one occasion at Camp Road in September, a barista was communicating with coworkers over a headset about the Union when support manager Taylor Alvarez, interrupted via headset and told them they were not allowed to talk about the Union. At Genesee Street, Rizzo and Dragic were reprimanded by support managers for swearing while using headsets. At the time, the support manager was off the floor monitoring employee communications. Support managers also imposed a rule headsets could be used, asides from themselves, by the three employees working at drive-through and warming stations. At Sheridan & Bailey, the constant use of headsets by support managers effectively curtailed union-related discussions that occurred before their arrival.

By constantly wearing headsets, even off the floor, support managers were able to monitor employee conversation. This was a continuous practice during their time at these stores. In addition, employees were experiencing the commission of other unfair labor practices over a highly contentious Union campaign. This was a departure from past practice in Buffalo stores where store managers did not ordinarily wear headsets when they were off the floor.

Under the totality of those circumstances, the "out of the ordinary" conduct by support managers in continuously wearing of headsets at Camp Road, Transit & French, Genesee Street, and Sheridan & Bailey reasonably created the impression that their protected concerted conduct was being monitored in violation of Section 8(a)(1). *Parsippany Hotel Mgmt. Co.* v. NLRB, 99 F.3d 413, 420 (DC Cir. 1996) (supervisors' presence was deliberately calculated to show and demonstrate observation"). Cf. *Wal-Mart Stores, Inc.* 350 NLRB 879, 883 (managerial conduct that is not out of the ordinary is permitted).

F. Interfering with Protected Speech [[¶ 8(e), (j)]

After they arrived in September, support managers were constantly on the floor working alongside employees or monitoring communications via headset. In early November, Westlake was speaking with a coworker about wage rates. Pringle overheard the conversation. Even though Camp Road employees routinely discussed other subjects nonwork-related subjects at work, Pringle told Westlake that employees were not supposed to be talking about wages. By permitting employees to engage in nonwork discussion at work, the Respondent could not prohibit employees from talking about wages, a basic term and condition of employment. In doing so, the Respondent violated Section 8(a)(1).

Prior to August 23, employees normally placed work and nonwork-related literature near the employee sign-in sheet or the refrigerator in the back room. In November, several employees began posting union literature there. However, that literature was always removed, while other nonunion-related materials remained. When employees asked for an explanation, store manager Derek Sveen said that nothing, except for the schedules, was allowed to be posted there. Support manager Amy Ruiz told an employee that the Respondent adopted a new policy permitting only company-approved postings. When Greta Case was asked about it, she replied that, in accordance with the company's no-solicitation policy, only milk schematics could be posted on the refrigerator. However, other company postings remained in an area by the manager's station. By removing union literature from an employee break area where other nonwork literature was posted, the Respondent violated Section 8(a)(1).

G. Interrogation [¶¶ 8(i), (k)-(l)]

The Board considers the totality of the circumstances in de-

termining whether the questioning of an employee constitutes an unlawful interrogation. *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In making that determination, the Board considers the factors set forth in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): (1) whether there was a history of employer hostility or discrimination; (2) the nature of the information sought (whether the interrogator sought information to base taking action against individual employees); (3) the position of the questioner in the company hierarchy; (4) the place and method of interrogation, and; (5) the truthfulness of the interrogated employee's reply. The *Bourne* factors should not be mechanically applied or used as a prerequisite to a finding of coercive questioning, but rather used as a starting point for assessing the totality of the circumstances. *Westwood Health Care Center*, 330 NLRB 935, 939 (2000). The core issue is whether the questioning would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their statutory rights. This is an objective standard. *Multi-Aid Service*, 331 NLRB 1126 (2000), enfd. 255 F.3d 363 (7th Cir. 2001).

Around the end of November, Higgins was helping Shanley load supplies into the latter's vehicle in the Elmwood parking lot. After they finished loading, Shanley pointed to Higgins' Union pin and asked Higgins if "you support this?" After Higgins replied in the affirmative Shanley said she respected that decision and it did not change her personal view of Higgins. Higgins stopped wearing the Union pin until early January. Application of the *Bourne* factors strongly suggest coercion in this instance. Although Higgins admitted the obvious—that she supported a cause reflected on a pin she was wearing—the fact that Shanley asked, if "you support this," suggested that she disapproved of the pins. Shanley's inquiry into Higgins' union activities occurred in the midst of mail balloting at Elmwood and following a series of coercive actions at the store by her, corporate officials, and support managers. Just weeks earlier, Shanley's and a support manager pulled a new employee off the floor and asked her to vote no in the election in order to give the Respondent time to resolve employees' complaints. I conclude Shanley inquiry amounted to a coercive interrogation in violation of Section 8(a)(1).

On February 14, Clark, the East Robinson store manager, and Pool, the NFB store manager, pulled Conklin off the floor for a meeting at a table. Clark told Conklin that she needed to stop gossiping about her and trying to turn other employees against her. Conklin asked if the meeting was about her open support for the Union. Just one month earlier, Conklin announced her support for the Union and Clark suddenly stopped talking to her. Conklin then said she was not comfortable continuing the conversation, got up and left. Under the circumstances, summoning an employee to a sit down meeting with two store managers and accusing her of gossiping and turning coworkers against management restrained employees from engaging in protected concerted activity in violation of Section 8(a)(1).

On February 25, Scheida, a newly-promoted Transit & French assistant store manager, told Krempa that she saw her with a bunch of Memphis 7 pins and asked if she was the one who handed them out to coworkers. Krempa admitted she was one who handed them out and offered one to Scheida. Scheida accepted it. In this instance, Scheida's question did not establish an unlawful interrogation. Applying the *Bourne* factors, Scheida had just been promoted to a managerial position, and had not yet been involved in any of the unlawful behavior. She saw Krempa with a bunch of the pins on display. Krempa answered Scheida truthfully and asked if she wanted one. Scheida agreed and took one. The encounter hardly reeked of intimidation. Accordingly, allegation ¶ 8(k) is dismissed.

H. Packing the Genesee Street Unit [¶ 8(h)]

In October, NFB employees were temporarily assigned to work out of Genesee Street while their store was renovated, even though there were 10 other stores in closer proximity. The NFB employees were mostly anti-union or disinterested in the election. This resulted in overcrowding on the floor—as many as 15 to 18 employees—without enough work for all of them. However, shift managers were not allowed to send any of them home as they normally would have. As a result, the NFB employees accumulated enough work hours to vote in the November-December mail ballot election.

In contrast, the mostly prounion Walden & Anderson employees, who were also sent to Genesee Street while their store was also closed, were not permitted to vote. Conversely, when Genesee Street was itself closed for a renovation, the employees were not sent to work at NFB.

In determining whether an employer unlawfully "packs" a unit prior to an election, the Board considers whether a substantial number of employees were added in order to dilute order the union's strength. *Einhorn Enterprises, Inc.*, 279 NLRB 576, 596 (1986) (employer increased employee complement in order to expand unit to dilute union's strength in election). Here, the evidence strongly suggests that the Respondent violated Section 8(a)(1) by augmenting the Genesee Street unit with a substantial and unnecessary number of employees from NFB in order to dilute the proportion of presumably prounion Genesee Street employees able to vote in the November-December mail ballot election. *Golden Fan Inn*, 281 NLRB 226, 229 (1986) ("cases involving unit packing frequently turn on circumstantial evidence")

II. THE SECTION 8(A)(3), (4) AND (5) ALLEGATIONS

Section 8(a)(3) of the Act prohibits an employer from discriminating against employees to hinder or promote union membership. In determining whether an employer's activity violates the Act, the Board applies the test outlined in *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Corp.,* 462 U.S. 393, 399-403 (1983). The General Counsel has the burden of establishing that the employee's protected activity was a motivating factor in the adverse employment action. The elements commonly required to support such a showing are union and or other protected activity by the employee, employer knowledge of that activity, and antiunion animus on the part of the employer. Once the General Counsel makes that showing, "the burden of persuasion shifts to the employer to demonstrate that the same

action would have been taken even in the absence of the protected conduct." *Donaldson Bros. Ready Mix, Inc.,* 341 NLRB 958, 961 (2004), citing *Wright Line,* supra at 1089. See also *Cintas Corporation*, 372 NLRB No. 34, slip op at 5 (2022), citing *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007) (employer's burden not met by merely showing a legitimate reason); *Willamette Industries,* 341 NLRB 560, 563 (2004) (same). When the stated motives for an employer's adverse respondent's actions "are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the respondent desires to conceal." *Fluor Daniel, Inc.,* 304 NLRB 970, 970 (1991) (citing *Shattuck Denn Mining Corp. v. NLRB,* 362 F.2d 466, 470 (9th Cir. 1966)), enfd. mem. 976 F.2d 744 (11th Cir. 1992). Based on the vast and systemic barrage of Section 8(a)(1) violations described above, I find that an inference is appropriate with respect to the overwhelming number of adverse actions that ensued due to the Respondent's extreme animus toward the organizing campaign in the Buffalo area. The only exceptions are instances where the Respondent proved that the adverse actions were consistent with past practices and would have occurred even in the absence of the union activity.

The same analysis is used in determining whether a discharge also violates Section 8(a)(4). Section 8(a)(4) makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." *General Services*, 229 NLRB 940, 941 (1977). The Board construes this provision liberally "in order to fully effectuate the section's remedial purpose." Id.

A. Stricter Application of Work Rules [¶¶ 11(a-e, g-l)]

Within a week after Buffalo-area employees publicly launched the organizing campaign, Williams and corporate officials showed up at Buffalo-area stores, spoke with employees, inspected the stores, and unlawfully solicited grievances. During those conversations, employees expressed their support for the Union and asked Williams to sign the Fair Election Principles. Employees would repeat those requests at listening sessions and push back against the Respondent's statements about the negative consequences of union representation. Some employees would also discuss their union support in conversations with their store managers and support managers.

The Williams team gathered the information collected in its initial visits to stores and took it to the listening sessions that followed. At the listening session, the Williams team presented employees with a blatantly false reason for these unprecedented meetings—that they heard the pleas of Buffalo employees about the problems they were dealing with and were there to help. The August 23 letter, however, said nothing of the sort. In that letter, 49 Buffalo-area employees notified the Respondent that they were organizing a union in order to "ensure both that our voices are heard and that, when we are heard, we have equal power to affect change and get things done." They also clarified that "[w]e do not see our desire to organize as a reaction to specific policies but as a commitment to making Starbucks, Buffalo, and the world a better place." (emphasis supplied) The letter made no mention of concerns with employees' working conditions, pleas for help, or problems in the Buffalo market.

Shortly after their arrival, the Williams team brought in a battalion of district managers, store managers, partner resource managers, and operations managers from all over the country to level set Buffalo-area stores. In Respondent's parlance, level setting meant ensuring that stores were functioning in accordance with its rules and policies. Employee compliance with the Respondent's rules and policies, however, was not something that they complained about or suggested before, during, or after listening sessions. Nor did level setting have anything to do with nearly all of the problems expressed by employees at listening sessions—wage rates, understaffing, training, supply shortages, broken and outdated equipment, and facility issues. Employees did complain about the failure of certain store managers to ensure complied with its COVID protocols. However, those concerns focused on *customers*, not employees.

Moreover, Pusatier, the incoming regional director, did not set foot in Buffalo until September 1. As previously explained, she had been "virtually immersing" in the Buffalo market during the month of August, while also overseeing the Boston market, and conceded that she was unaware as to how bad conditions were in Buffalo. Pusatier observed poor store conditions in Saratoga Springs on the eastern side of Area 156 a few months earlier during a gathering of regional directors. Ironically, although Peck told her that those conditions were typical throughout Area 156, there is no evidence that the Respondent ever level set stores outside of the Buffalo market.

The Respondent's level setting in the Buffalo market proved problematic for its employees, many of whom were out of compliance with rules and policies), most commonly, the dress code, jewelry, attendance and punctuality, and communication (no-cursing policies. Initially, managers told employees to comply with rules. In October and November, employees were required to reacknowledge the rules and policies in writing. Employees who failed to comply were issued documented coachings, warnings, or discharged. Active union supporters were significantly impacted by the stricter rules enforcement, including Tarnowski (discharged for violating COVID policies), Krempa (warnings for cursing, and discharged for violating attendance and punctuality policy), Rojas (discharged for violating attendance and punctuality policy), Park (warnings for cursing, and discharged for inappropriate behavior), Nuzzo (terminated for safety and security violation, and harassment policy after discharge), Norton (cursing), and Dragic (cursing). Moreover, Fleischer and Higgins were discharged pursuant to a newly-created minimum availability policy. As discussed below, prior to August 23, these policy deviations would either have resulted in no discipline at all or discipline of lesser severity.

Additionally, support managers prohibited employees from speaking with each other and customers about the Union campaign, and distributing prounion literature pursuant to the no-solicitation policy. They also required employees to follow rules relating to the ordering and consumption of food and beverages, ordering of supplies, the disabling of channels or closing of stores; and placement of stickers on cups,

The Respondent provides ample precedent for the proposi-

tion that its policies and rules were lawfully implementation, *prior to August 23.* However, the complaint only alleges the unlawful enforcement of rules, not the implemented thereof. Nor is it alleged that the process of level setting—enforcing rules and policies—is unlawful. As such, the *Wright Line* analytical framework is applied where an employer's adverse actions are alleged to have been motivated by union animus. See, e.g., *Shamrock Foods Co.*, 366 NLRB No. 107, slip op. at 1 fn. 1 (2018). Given its pretextual explanations, timing—coming shortly after the August 23 letter—and abundant animus (passim), the Respondent's motive for blitzing the Buffalo market with corporate staff and level setting it was crystal clear—the union activity.

Accordingly, the Respondent's stricter enforcement of its rules and policies in response to the organizing campaign adversely impacted employees in violation of Section 8(a)(3) and (1) of the Act. See *St. John's Community Services of New Jersey*, 355 NLRB 414 (2010) (employer's decision to enforce a work rule or policy more strictly is unlawful if that action is undertaken in response to union activity); cf. *Schrock Cabinet Co.*, 339 NLRB 182, 183 (2003) (employer's stricter enforcement of work rules will not unlawful unless it is a consequence of employee participation in protected activity."[442]

B. Closing Stores Early [¶¶ 12(d), (q-r)]

The complaint alleges that, beginning in September, the Respondent unlawfully reduced employee compensation by closing Buffalo-area stores early to enable employees to attend mandatory listening sessions. Most meetings were held at the stores. Some were held in Buffalo-area hotel conference rooms, including an areawide meeting with Schultz on November 6.

It is undisputed that employees were paid to attend these meetings in accordance with New York's "reporting pay" laws, and that the only loss of compensation was for tips by employees scheduled to work during those stores closures. In the Buffalo market, that averaged about $0.60 to $0.80 cents an hour. Moreover, employees were promised reimbursement for parking costs for attending the November 6 meeting. Although validated by the company, employees' parking tickets were not honored at the parking facility and they ended up paying out-of-pocket. It is also undisputed that employees were not reimbursed for those expenses.

The Respondent contends that this allegation should be dismissed because the amount of compensation from tips was *de minimis* and sometimes, employees make no tips. With respect to the cost of parking, the Respondent simply contends that it went to great lengths to ensure employees did not lose compensation for attending the event. However, it failed to produce any evidence that employees were reimbursed for parking expenses.

The loss of compensation incurred by employees for lost tips and parking costs resulted from their attendance at meetings where the corporate officials and managers subjected employees to unlawful threats and promises. While the amounts were de minimis, the Board is usually reluctant to dismiss such claims because of the potential chilling effect such actions have on employees' protected activity. See *Tower Automotive, Inc.*, 326 NLRB 1358 (1998) (issuance of warning to employee warranted remedial order notwithstanding removal of warning from employee's file given lack of employer repudiation of conduct). Accordingly, the Respondent violated Section 8(a)(3) and (1) by causing employees to incur lost compensation, including loss of tips and the cost of parking for the November 6 event.

C. Store Closures and Reduced Hours

1. Walden & Anderson [¶ 12(a)(i), (b), (j), and ¶ 13(b)]

In late August, the Respondent reduced the hours at Walden & Anderson within days of the campaign launch in late August. The store began opening a half hour later and closed an hour earlier. No specific explanation was provided by the Respondent for the reduction in operating hours at Walden & Anderson, where employees were actively organizing and an initial petition was filed on September 9. Nor was there any proof that the store had staffing issues. In fact, the store sent employees to Genesee Street to help keep that store open. Based on the timing, the abundant proof of union animus in the record, and absence of specific evidence explaining the action, I find that the Respondent's reduction in store hours at Walden & Anderson in late August retaliated against employees for engaging in union activity by reducing their compensation in violation of Section 8(a)(3) and (1).

On September 6, Walden & Anderson temporarily closed and then transitioned to a training center until November. During that period, Walden & Anderson employees were temporarily transferred to other stores and, in some cases, received less hours. Employees who remained at Walden & Anderson did not receive the full free (fresh) food benefit previously enjoyed and lost the opportunity for tips because the store was not servicing customers. In addition, barista trainers outside of Walden & Anderson received no training assignments. As previously discussed, Walden & Anderson's closure resulted from the unlawful grant of benefits to employees on the issues of staffing and training. By doing so, the Respondent: (1) reduced the compensation of Walden & Anderson employees who temporarily transferred to other stores and received less work hours than normally assigned, (2) deprived employees who remained at Walden & Anderson of tips that they would have earned had the store remained open to customers, (3) eliminated the free food benefit and (4) simultaneously withdrew benefits from barista trainers, including Westlake and Cochran, by depriving them of compensated training assignments at their stores. None of this would have occurred in the absence of the Union campaign. Accordingly, the closure of Walden & Anderson from September 6 until it fully reopened in November constituted a continuing grant of benefits to employees in the midst of a union campaign and, by doing so, the Respondent unlawfully discriminated against employees in violation of Section 8(a)(3) and (1). Accordingly, the Respondent's unlawful grant of benefits to Buffalo-area employees by implementing centralized

[442] No proof was offered in connection with the alleged stricter enforcement of the personal mobile device, telephone calls, and mail policy. [¶ 119f)]. Therefore, that allegation is dismissed.

training at Walden & Anderson from September 6 until it fully reopened to customers in November discriminatorily reduced the compensation of Walden & Anderson employees and Buffalo-area barista trainers in violation of Section 8(a)(3) and (1).

2. Genesee Street [¶ 12(a)(ii)]

In September, the Respondent reduced Genesee Street's hours of operation. Genesee Street was a hotbed of union activity and a petition was filed on August 30, just one week after the campaign launch. However, the undisputed evidence established that Genesee Street had an extremely high number of callouts and the Respondent was barely able to keep it open without shifting employees there from other stores. As such, the Respondent would have had to take similar action even in the absence of union activity. Under the circumstances, the evidence failed to establish that the reduction in store hours at Genesee Street was motivated by union activity. Accordingly, ¶ 12(a)(ii) is dismissed.

3. Camp Road [¶ 12(a)(iii)]

In late August—on or around the time that Camp Road employees filed their petition—the Respondent reduced store hours by one and a half hours a day. There was no explanation as to why the Respondent reduced operating hours, thereby reducing employee compensation in the process. No was there any proof that the store was short-staffed at the time. In fact, in September, the Respondent offered Camp Road employees as many hours as they wanted. None of this would have occurred in the absence of the Union campaign. Based on the timing, the abundant proof of union animus in the record, and absence of specific evidence explaining the action, I find that the unexplained reduction in store hours at Camp Road in late August retaliated against employees for engaging in union activity by reducing their compensation in violation of Section 8(a)(3) and (1).

4. Transit & French [¶¶ 12(a)(iv), (s)(ii)]

The complaint alleged that the Respondent unlawfully reduced store hours at Transit & French on October 7 and reduced employees' hours in November. The undisputed evidence established that store hours were reduced on several occasions when the store was low on shift supervisors. In addition, the store also temporarily closed due to COVID and callouts during this time. Regarding the reduction of store hours, the record established that managers discussed going to a "seasonal" schedule at a meeting in February. However, there is no evidence of a reduction of employee hours in November. Accordingly, ¶¶ 12(a)(iv) and (s)(ii) are dismissed.

5. UB Commons [¶ 12(a)(v)]

In December, as typically occurred during semester breaks, the store closed two hours early. However, when students returned in January, the store did not return to normal operating hours. Although UB employees have not filed a representation petition, at least one employee wore a prounion pin and had been discussing the Union with coworkers. None of this would have occurred in the absence of the Union campaign. Based on the timing, the abundant proof of union animus in the record, and absence of specific evidence explaining the action, I find that the unexplained continued reduction in store hours at UB Commons after December retaliated against employees for engaging in union activity by reducing their compensation in violation of Section 8(a)(3) and (1).

6. East Robinson [¶ 12(a)(vi), (s)(iii)]

In January, the Respondent reduced East Robinson's hours of operation. Although they did not file a petition until April 18, Conklin, Disorbo and other employees were already engaged in protected concerted activity in January. In February, the Respondent reduced shift supervisors' hours by limiting them to shifts in that role, not as baristas. The Respondent offered testimony regarding store disruptions in January but did provide an explanation as to why shift supervisors would have been prevented from working shifts as baristas. None of this would have occurred in the absence of the Union campaign. Based on the timing, the abundant proof of union animus in the record, and absence of specific evidence explaining either action, I find that the unexplained reductions in store hours in January and shift supervisors' hours in February at East Robinson retaliated against employees for engaging in union activity by reducing their compensation in violation of Section 8(a)(3) and (1).

7. Elmwood [¶ 12(s)(i)]

In November, contrary to what corporate officials told employees in listening sessions, the Respondent reduced employee hours in order to apportion hours to newly-hired employees. The credible evidence established that the Respondent overstaffed Elmwood in November. As applied to Elmwood—which was not short-staffed at the time—the addition of 16 employees was an overreaction to a larger plan to address staffing and training needs in the Buffalo market. None of this would have occurred in the absence of the Union campaign. Accordingly, the reduction in employee hours at Elmwood resulting from its continuing grant of benefits to employees in the midst of a union campaign and the critical period of an election unlawfully discriminated against Elmwood employees, thereby reducing their compensation, in violation of Section 8(a)(3) and (1).

8. Galleria Kiosk [¶ 12(c)]

The Galleria kiosk had significant union activity—four of its eight employees were signatories to the August 23 letter. O'Hare, one of the organizing committee's founding members, even spoke about the campaign in front of her store manager. Union supporters had also collected authorization cards from most employees but held off filing a petition until everyone signed.

During the corporate officials sweep through Buffalo-area stores soon after August 23, they solicited and received feedback from employees about needed repairs and damaged equipment. After an employee told Williams about a pending request to repair a defective oven, the oven was replaced the next day. At a September 2 listening session, employees shared several complaints about the condition of the store. The Respondent responded by temporarily closing the kiosk on September 8 for one week of deep cleaning and reorganizing pairs. During the first week, employees were paid for retraining, cleaning and reorganizing the kiosk. At the end of the week,

the employees were told the store would remain closed for another week so they could hire more employees and train those recently hired. After the second week, the Respondent informed the employees that the kiosk would close permanently due to several reasons because it was a low performing store and drive-through stores were a better fit for the Buffalo market.

The reasons given by the Respondent for closing the kiosk were clearly pretextual—low performing and malls are on the way out—and the timing was suspicious. It made the announcement suddenly without giving employees even the slightest hint that it contemplated closing the kiosk until it made the sudden announcement. The Respondent knew of significant union activity at the store which, according to its financial record, had been making a profit. Indeed, the store manager appeared stunned and upset by the sudden announcement. Taken in the context of the Respondent's coercive conduct from the moment its corporate officials landed in Buffalo and flocked to area stores, it is clear that the Respondent was sending a message that other stores engaged in union activity could encounter a similar fate. See *Dynasteel Corporation.*, 346 NLRB 86, 88 (2005) (animus demonstrated by other contemporaneous unlawful conduct). Based on such extensive union animus, the suspicious timing of the decision, the store manager's reaction to the sudden announcement, and the lack of a legitimate explanation for the sudden redirection, the overwhelming circumstantial evidence established that the decision to close the Galleria kiosk was unlawfully motivated. The Respondent also failed to meet its *Wright Line* burden to show that the closure would have occurred even in the absence of union activity. No such evidence was produced. Under the circumstances, the Respondent violated Section 8(a)(3) and (1).

D. Temporary Store Closures [¶ 12(e)-(f)]

Between September and January, the Respondent temporarily closed the following 11 stores for renovations and maintenance. The closures ranged from one day to several weeks at the following stores: NFB, Transit & French, and Walden & Anderson (September); Transit Commons, Transit & Regal, Williamsville Place, Elmwood, Genesee Street, and Sheridan & Bailey (October); Hamburg and Transit Commons (December); and Delaware & Chippewa (January). During the temporary closures, employees were offered assignments at other stores. Some, however, encountered delays in being scheduled and/or were scheduled for less hours than they received at their home store. Employees who were remained in their stores to assist with cleaning and remodeling lost tip pay while their stores were closed. As previously discussed, the store renovations occurred as the result of unlawful solicitation and grant of benefits granted to employees by renovating 14 Buffalo-area stores in the midst of an organizing campaign. But for that unlawful conduct, employees would not have lost regular or tip pay during those periods.

Between early September and January 5, the Respondent also closed Buffalo-area stores early on 35 occasions in order to conduct pre-election meetings. As previously discussed, controlling precedent holds that employer-mandated pre-election meetings are not per se unlawful in the absence of coercive conduct. Each of these meetings, however, became unlawful encounters as corporate officials and managers repeatedly solicited grievances, promised benefits, and reported about benefits granted and problems remedied.

Accordingly, by: (1) temporarily closing stores as the result of an unlawful grant of benefits in response to union activity, and (2) temporarily closing stores in order to subject employees to coercive conduct at pre-election meetings, the Respondent discriminated against employees for engaging in union activities by reducing their compensation in violation of Section 8(a)(3) and (1).

E. Disrupting Play Calling and Product Ordering by Shift Supervisors [¶¶ 12(h), (k),(u)]

The Respondent's Playbuilder software tool is made available to shift managers on their store iPads. The tool considers staffing on hand and the customer flow to produce a plan for deploying staff throughout the store. Its use is not required but the shift supervisor job description does list their use of "operational tools to achieve operational excellence." It is undisputed that Playbuilder is intended to make the shift supervisor's job easier and help the store run smoother. Nevertheless, Playbuilder was not being widely used or used effectively in the Buffalo market when the new district managers and support mangers arrived.

As part of the level setting, some support managers insisted that shift managers used the Playbuilder to arrange the deployment of employees. They also trained those did not know how to use the tool or were using it improperly. In certain instances, they redid staff deployments arranged by shift supervisors. On one occasion, a support manager prevented Rizzo from ordering supplies while he showed her how to do it in accordance with proper procedures. Rizzo resumed reordering supplies once he showed her.

The General Counsel contends that requiring shift supervisors to use Playbuilder, disrupting their play calling, and changing how they ordered supplies, undermined their authority and made their jobs harder. The aforementioned actions changed the prior practices of certain shift supervisors. The testimony, however, did not establish how these actions made their jobs more difficult or otherwise adversely impacted them. Moreover, the use of Playbuilder did not prevent shift supervisors from deviating from its recommendations as necessary depending on the circumstances. Neither claim is adequately supported by the record. Accordingly, allegations ¶¶ *12(h), (k),(u)* are dismissed.

E. Denying Requests to Pick Up Shifts at Other Stores [¶¶ 12(m) and 13(o)]

Prior to September, the Respondent did not enforce a policy requiring the approval of both store managers if an employee wanted to pick up a shift at another store. Through a variety of ways, including online chat groups, employees communicated with each to offer and pick up shifts. In October, district managers began requiring Buffalo-area employees to go through company channels to get the approval of both store managers. The reasons given by the Respondent's witnesses—to ensure that mismatches of skills did not occur, assist in scheduling,

assure that partners were properly paid, and to give those not on chat groups the same opportunities to pick up shifts—were unconvincing. There was no proof in the record that any of those problems existed in the Buffalo market prior to the level setting in October.

In November, after Sheridan & Bailey filed its petition, Skretta, a leading union advocate, attempted to pick up a shift from Westlake at Camp Road, which was in the midst of voting. Both openly supported the Union. The request was denied without explanation. In December, Sheridan & Bailey employees posted a note that their store was down to four or five employees and needed help. Since his store was overstaffed, Westlake asked and received approval from both shift supervisors since neither store manager was present at the time. on duty. After two hours into his shift at Sheridan & Bailey, Case, the district manager entered the store and almost immediately told Westlake he was not needed and to go home. On January 1, Cohen, another union supporter, drove from Sheridan & Bailey to drop off supplies at another store. When she got there, Cohen noticed that employees at the store were overwhelmed. She called Case because the store manager was not around and offered to pick up a shift at the store. Case did not immediately answer and Cohen left shortly thereafter. Case called her later and denied the request.

At the time that the Respondent denied Skretta, Westlake, and Cohen opportunities to pick up shifts, it was well aware of their union activities. Prior to September, each would have been able to pick up shifts in those situations because the Respondent did not enforce the requirement that they obtain the approval of the two store managers, much less the district manager. Employees routinely did it and notified their managers after the fact. All three followed the more onerous requirement of requesting approval. Skretta was denied outright, while Cohen left after not getting a response from Case until it was too late. Westlake had already picked up the shift before Case pulled him off the floor and sent him home. But for the union activity throughout the Buffalo area, their efforts to pick up shifts at other stores would not have been denied prior to August 23. In Cohen's case, however, she left before getting an answer. Nor did Cohen testify that she would have been able and willing to return to the store had Case approved her request an hour later. The Respondent's pattern of coercive conduct strongly suggests that the change was intended to accomplish exactly what Clark instructed Conklin to do at East Robinson—deny shifts to union supporters. In these circumstances, the Respondent's requirement that Buffalo-area employees adhere to a previously unenforced policy for picking up shifts, and its enforcement of that policy against Skretta and Westlake, were unlawfully motivated and discriminatorily denied employees the opportunity to pick up shifts at other stores in violation of Section 8(a)(3) and (1). Allegation ¶ 13(o)(iii), however, is dismissed since Cohen left the store before she got an answer, an hour elapsed, and it would be speculative to assume that Case would have denied her request at the time she called.

F. Relieving Store Managers of Duties [¶ 12(g), (l), (n), (p)]

In September, the Respondent also brought in recruiting specialists and relieved Buffalo-area managers of their hiring responsibilities. The move was announced at pre-election meetings as a way to expedite hiring and enable store managers to avoid the time-consuming process of pre-screening, interviewing, and selecting candidates. When considered in conjunction with the simultaneous shifting of managerial duties to support managers, discussed below, that rationale lacks credibility. Multiple support managers were sent to assist store managers administratively and on the floor. While the Respondent's plan was to always have a manager in the store during operating hours, many stores had a support manager on the same shift as the store manager. In essence, store managers had more time to attend to the hiring process or anything else for that matter. I concur with the General Counsel that the change deprived employees of having their store manager—who knew the store and its personnel well—decide who should work alongside them.

In October, the Respondent transferred Elmwood store manager Shanley's ability to schedule and promote employees to support managers. These changes deprived employees of the benefit of having their schedules made and promotions decided by a store manager who was familiar with their performance, abilities and preferences. In November, the Respondent implemented the same change at Williamsville Place. These changes were neither requested by employees nor planned by the Respondent prior to August 23. Again, the timing was suspicious and the record is replete with instances of unlawful conduct by support managers, some of whom received promotions shortly before testifying. Additionally, there is ample record evidence of Respondent's animus, including instructions to store managers to surveil union activity and discourage union solicitation. Under the circumstances, the Respondent's unlawfully motivated removal of store managers' hiring, scheduling and promotional duties discriminatorily withdrew benefits from employees in violation of Section 8(a)(3) and (1) of the Act.

F. Imposing More Onerous and Rigorous Terms and Conditions [¶¶ 12(o), (v)-(aa)]

The imposition of more onerous working conditions violates Section 8(a)(3) if it is motivated by antiunion sentiment. See *Willamette Industries, Inc.,* 341 NLRB 560, 561-562 (employer unlawfully revised schedule in order to deprive union supporters of opportunity to work solely on day or night shift). In numerous instances, the Respondent's corporate officials, support managers, and store managers expanded on their coercive conduct by making it more difficult for employees to fulfil their responsibilities. They did this by imposing previously unenforced policies or simply changing the way employees did things.

The Respondent's policy required that milk be refrigerated after each use and stickers not cover the company logo. At Williamsville Place, employees routinely left the milk containers, which were quickly used up, on the bar while they made beverages during the peak morning shift. By doing so, employees saved time from having to stop what they were doing, walk to the refrigerator on the other side of the counter, and return to get the milk for the next drink. Employees also randomly placed customer order stickers anywhere on the cups. In October, a support manager enforced the milk refrigeration policy and required employees to take the time to make sure

that stickers did not cover the company logo. This change in practice made drink making more difficult by increasing the amount of time it took for employees to perform that task.

The Respondent's policy required employees to stand on the customer line when ordering drinks or food during their breaks. Prior to August 23, Transit Commons employees would pour their own drinks and/or take food, and ring themselves out. By doing so, employees saved time that would have been used up standing on line, and leaving them with little or no time to eat or drink. In December, a support manager told Transit Commons employees that they needed to comply with company policy and stand on line when purchasing drinks or food during their breaks.

On December 9 election results were announced, Rizzo tried to call Genesee Street's store phone to inform coworkers. However, the call was rerouted to a customer service line. That was the first time in Rizzo's seven years with the company that the phone had been disconnected. Rizzo tried to call two other stores that day and was redirected to the same number. Not being able to call her store directly removed the only authorized method that employees had to communicate with the store if they were calling out or unable to make it there on time. This continued for one month. Providing a store phone that employees were able to call to communicate with their home store was a benefit and depriving them of it was obviously problematic. Although the store had received an excessive number of calls supporting the Union *prior* to December 9, the Respondent only chose to disconnect the phone on the day that election results favoring the Union were reported. Moreover, it continued to do it for a month even though there is no evidence that the excessive calls lasted that long.

At the end of January, Delaware & Chippewa store manager Hunt announced an increase to employees' scheduled hours and new policy requiring a minimum 3-4 day availability each week in order to avoid termination. This change essentially required employees to work one weekday shift, one weekend shift, and one evening shift. In February, Elmwood store manager Shanley implemented a minimum availability policy by telling Higgins that he needed to increase his minimum availability by an additional day, as well as 20 hours per week. Shanley explained that the store was cutting hours and she did not want to take the hours away from an employee who was available to wok more 32 hours a week. Higgins had always been accommodated with a reduced schedule during past "off-season" periods. In both instances, the Respondent changed past practices by requiring employees to work more hours than they were usually available for and/or during days of the week when they were not typically available to work in the past.

At Delaware and Chippewa, employees typically called out and picked up shifts through a commonly used group chat group. Hunt was in the group and would approve the callouts and shift pickups with a "tag," In February, support manager Heather Dow put an end to that practice, requiring employees to call her directly when calling out and to contact both store managers through company channels. The change in practice required employees take additional actions when calling out and picking up shifts.

Having unlawfully granted shift managers at East Robinson a benefit in the fall by routinely granting their requests to disable mobile orders and/or close the café as necessary, the Respondent did an about turn in February. Experiencing intense union and other protected concerted activity, the Respondent reversed course, required more details, and rarely granted those requests. The Respondent contends that the General Counsel cannot have it both ways—arguing in the first instance that granting the benefit was illegal and then arguing that it was unlawful to take it away. I disagree. In the context of the Respondent's periodically recalibrated campaign to suppress union activity, this development was just another example of the "hot and cold approach" it took during the organizing campaign—shower employees with benefits in the first instance, and if they moved forward towards representation—engage in threatening conduct and reprisals.

Each one of these changes resulted in more onerous working conditions for employees, occurred in the midst of significant union activity at these stores, and would not have taken place absent such activity. Considering the timing and overwhelming evidence of union animus, I find that the Respondent's imposition of more onerous terms and conditions of employment was motivated by animus towards employees' union or other protected activities. Accordingly, the Respondent discriminated against employees in violation of Section 8(a)(3) and (1) of the Act.

G. Withdrawing Promised Benefit to Convert Williamsville Place [¶ 12(t)]

In late October, the Williamsville Place store closed for renovations. At the time, employees were told that it was the first step in the conversion of the store to a drive-through and mobile order-only location. When the employees returned, they received conflicting information as to whether they still needed to be checking out customers in the café. Several employees, including Moore, asked Williams about this one when she visited one afternoon after the renovation. Williams replied that the intention was for the Williamsville Place store to function only as a drive-through and mobile order pickup location and they did not have to checkout customers at the cafe. Subsequently, the conversion never materialized. While I remain unconvinced that the project came to a dead end in a building permit office, the evidence falls short of establishing that the Respondent sabotaged or otherwise rescinded its unlawful promise to convert the store to a drive-through only store. Allegation ¶ 12(t) is dismissed.

H. Promoting Employees [¶ 13(b)]

After the Union publicly announced its campaign on August 23, Fiscus told Westlake as he arrived to work that he was being promoted to barista trainer that week. He then called Danelle Kanavel, a barista trainer on her day off and told her to come in for a meeting. When Kanavel got there later that day, Fiscus told her that she was being promoted to shift supervisor. Coupled with Fiscus's contemporaneous solicitation of grievances, the evidence indicated that the promotions were unlawfully motivated by Fiscus' intention to discourage union activity. In order to establish an 8(a)(3) violation, however, the proof must reveal more—that other employees were actually discrim-

inated against by the unlawfully motivated elevation of Westlake and Kanavel. See *General Motors Corp.*, 347 NLRB No. 67, slip op. at 1 (2006) (unpublished) (employer unlawfully promoted two employees as a favor to union in disregard of its existing criteria). As the record failed to establish such discrimination, allegation ¶ 13(a) is dismissed.

I. Refusing or Delaying Approval Transfers to Other Stores [¶ 13(c)-(d)]

The Respondent also violated Section 8(a)(3) and (1) by its refusal or delay in approving transfers for O'Hare, Cory Johnson, and Baganski. After the Galleria kiosk's sudden and unlawfully motivated closure, the Respondent transferred everyone except for O'Hare. O'Hare, a signatory to the August 23 letter and leading Union supporter, was left on her own to hustle for shifts at other stores. When she did find work, the hours were less than she accrued at the kiosk or was of limited duration. O'Hare reminded her manager about her dilemma but nothing happened. Nor was she given a legitimate reason for the prolonged oversight. This went on for weeks until O'Hare brought it up at a listening session. In this case, it is obvious that O'Hare was singled-out and denied work in retaliation for her union activity. While the evidence supports the allegation that the Respondent was unlawfully motivated in delaying O'Hare's transfer, it does not establish that she was also denied a transfer. Therefore, allegation ¶ 13(d) is dismissed.

In November, Corry Johnson, having openly engaged in union activity at Main Street and disputed Szto's assertions at listening session, sought a transfer to Sheridan & Bailey. He spoke with his manager and was told the request would not be a problem. Cochran then met with Sheridan & Bailey store manager Sveen, who was highly impressed and inclined to take him on. In contrast with past practice, however, Sveen consulted with Szto about the transfer. After doing that, Sveen did a sudden turnaround and told Johnson that he did not have an opening for him, an absurd response considering the store added two more employees in the next several months. This happened around November 11, when Sheridan & Bailey employees filed a representation petition. These circumstances lead to only one reasonable conclusion—Johnson was denied a transfer because he was actively engaged in union activity.

Baganski was hired in December to work at Sheridan & Bailey. She completed one week of training at East Robinson in January along with another new Sheridan & Bailey employee. While the other employee reported to Sheridan & Bailey at the end of January, Baganski's transfer was inexplicably delayed for two weeks. Baganski was not openly engaged in union or other protected activity at the time. However, the Respondent was well aware of her personal relationship with Cochran, a vocal Union supporter. Here again, in the absence of a legitimate reason to indicate otherwise, the evidence strongly suggests that the Respondent was unlawfully motivated to delay Baganski transfer to Sheridan & Bailey in retaliation for either her presumed support for the Union or to discourage Cochran from engaging in further union activity.

J. Denying Training Assignments at East Robinson [¶ 13(g)]

In November, East Robinson became a central training center. Contrary to past practice of assigning training to barista trainers, the majority of the assignments were given to shift supervisors. Support manager Adrian Morales explained this change to the fact that the new employees were at a "developmental" stage of training. That rationale is not credible since new employee training is inherently developmental. Moreover, Clark lied to Tarnowski, a barista trainer, that there was no one available to train while shift supervisors continued doing just that. By lying to Tarnowski about the lack of available training opportunities, Clark unlawfully discriminated against a prounion barista trainer in violation of Section 8(a)(3) and (1).

K. Retaliation Against Reeve [¶ 13(e) and (s)]

In September, Reeve, an unabashed leading organizer at Camp Road, experienced a substantial reduction in assignments as a shift supervisor. Although she reduced her availability by two days after returning to school that month, Reeve was still available to work the same number of full shifts each week as a shift supervisor. No legitimate explanation was offered for the reduction, which paid a lower hourly wage rate. Therefore, there are only two possible explanations. One possibility is that the reduction was due to the Respondent's overstaffing of Camp Road in furtherance of its unlawful grant of benefits to employees in violation of Section 8(a)(1). Considering that no legitimate reason was given for the reduction, the only other explanation is that it was due to Respondent's unlawful motivation to retaliate against Reeve. In either case, the Respondent discriminated against Reeve by assigning her to lesser-skilled work in retaliation for union activity in violation of Section 8(a)(3) and (1). See, e.g., *Wendt Corp.*, 369 NLRB No. 135, slip op. at 3-4 (2020) (skilled welder unlawfully assigned to saw work).

In January, partner resource manager Holly Klein informed Reeve that she was under investigation for using slurs or hate speech to refer to Pringle after he counseled her over a Black Lives Matter T-shirt and union solicitation. Klein refused to tell Reeve how she obtained the information, which had only been shared on an employee-only chat group. After Reeve explained that the remark was not offensive and would have apologized if it was, Klein said that she would get back to her within a week with the results of the investigation. She never did. In the absence of a claim that Reeve engaged in misconduct or harassment during work time, Klein did not have a legitimate reason to investigate Reeve. Cf. *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000) (employers have a legitimate business interest in investigating facially valid complaints of employee misconduct, including complaints of harassment). Therefore, by creating the impression that Reeve's protected communications with other employees outside the workplace were under surveillance, the Respondent unlawfully discriminated against Reeve by threatening to impose discipline in violation of Section 8(a)(3) and (1).

L. Sending Employees Home Prior to the End of Their Shift [¶ 13(i)]

On October 11, Dragic was coughing at work, administered the COVID coach protocol by support manager Lion Mendoza, and then sent home early. The record established that Mendoza

reasonably applied the Respondent's COVID policies and procedures that existed prior to August 23. The following day, the same thing happened with Lerczak and she too was sent home early. Brian Murray, another open union supporter, was sent home early on November 23 and 24 for failing to comply with the Respondent's stricter enforcement of the dress code policy. On December 23, Westlake was sent home early due to the Respondent's stricter enforcement of the policy for picking up shifts. On March 15, Krempa was sent home early due to the Respondent's stricter enforcement of the jewelry policy. On March 24, Tarnowski was sent home early due to stricter enforcement of the Respondent COVID logging policy. All of the aforementioned employees were union supporters.

In the cases of Murray, Westlake, and Krempa, they would not have been sent home early for failing to adhere to the Respondent's stricter enforcement of the dress code, jewelry, and shift pickup policies. Therefore, by sending them home prior to the end of their shifts, Respondent violated Section 8(a)(1) and (3) of the Act. Dragic, Lerczak, and Tarnowski , however, were sent home in accordance with the Respondent's COVID coach protocol. Tarnowski's was actually working his shift after omitting key symptoms from the COVID coach questionnaire. However, he told his shift supervisor that he did not feel well and that he wanted to go home once the store was adequately staffed. Later, a manager overheard him ask the shift supervisor again if he could go home. While the shift supervisor overheard the shift supervisor say yes, the manager pulled him aside and asked what his symptoms were. She initially told him he could stay because he did not mention that he also had diarrhea. However, when he replied that he was experiencing that as well, they engaged in a contentious back and forth, resulting in him being sent home. In Tarnowski's case, the manager was actually inclined to leave him working until he volunteered that he was sicker than he let on. Tarnowski wanted to go home and got his wish. Moreover, the fact that the manager was initially going to leave him working indicated that her actions were not motivated by Tarnowski's union activities. Since the evidence showed that Dragic, Lerczak, and Tarnowski would have been sent home under similar circumstances prior to August 23, ¶¶ 13(i)(i)-(ii) and (viii) are dismissed.

M. Randomizing Employee Shifts [¶ 13(j)]

Krempa and Park openly supported the Union. Prior to August 23, Krempa and Park mostly worked the morning shift. After support managers began writing the schedules, Krempa's shifts became more unpredictable, with more midday or night shifts. Krempa would be assigned to work opening, midday, and closing shifts, all in the same week. In Park's case, his schedule became more haphazard in late January when the Respondent scheduled him for mostly closing shifts, with some opening or midday shifts mixed in. Neither Krempa nor Park requested changes to their schedules. Considering the Respondent's widespread unlawful conduct in the Buffalo area and the lack of a legitimate explanation for these changes, the record established that they were motivated by the Respondent's union animus. In these circumstances, the randomization of shift assignments for Krempa and Park discriminatorily imposed more onerous working conditions in violation of Section 8(a)(3) and (1). See, e.g., *Allstate Power Vac, Inc.*, 357 NLRB 344 (2011); *Willamette Industries, Inc.*, 341 NLRB 560 (2004).

N. Reducing Employees' Work Hours [¶ 13(k)]

In November, after Union supporters Lerczak and Dragic returned from COVID leave, both were scheduled for less hours at Genesee Street as a result of the store closing earlier. Support manager DeFeo admitted to Dragic that there was no reason why her hours could not be restored to previous levels. In January, Camp Road support manager Tanner Rees told Westlake that employees hours would be reduced going forward. When that occurred, Westlake noticed that he and the three other members of the Camp Road organizing committee—Ryan Mox, Elissa Pfleuger, and Joshua Pike—received more hours cut than anyone else. Based on the Respondent's extensive union animus and the lack of a legitimate explanation as to why these employees experienced reductions in hours, I infer that these actions were unlawfully motivated. Accordingly, the Respondent discriminated against the aforementioned employees because they engaged in union activity in violation of Section 8(3) and (1). *Somerset and Valley Rehabilitation and Nursing Center*, 358 NLRB 1361, 1363-1364 (2012) (unlawful for an employer to reduce employees' hours of work if the action was motivated by union animus.

O. Refusal to Consider Cochran for Promotion [¶ 13(l)]

When Cochran first started at Walden & Anderson in the summer—prior to August 23—his store manager urged him to apply for an open shift supervisor position. Cochran declined at that time, but applied online for the position when another opening arose in November. Despite speaking to Murphy and Santiago, Cochran never heard back. He applied again in the spring and summer but was not even considered. He asked his manager about it. She told him that he would make a good shift supervisor but she did not have control over the situation. The Respondent's contention that he needed to be in his position for six months before being promoted lacks merit for several reasons. First, he was never told when first urged by Prime apply prior to August 23 or at any other time. Second, he was promoted to barista trainer in October, when he had less than six months experience as a barista. Third, the Respondent offered no proof that Cochran was considered or that it followed its normal selection process in deciding not to consider him. Cochran was a prominent union supporter and the Respondent, engaged in widespread coercive activity throughout the Buffalo area, provided no explanation as to why Cochran was not considered for promotion to open shift supervisor positions. In these circumstances, I infer that the Respondent intentionally excluded Cochran from the hiring process and refused to consider his applications because he engaged in union activity in violation of Section 8(a)(3) and (1). See *FES*, 331 NLRB 9, 15 (2000), ends. 301 F.3d 83 (3d Cir. 2002). (refusal to hire cases require proof that the employer excluded applicant from the hiring process due to union animus).

P. Refusing to Permit Employees to Attend Pre-Election Meetings [¶ 13(m)]

On November 8—the final day before ballots were to be mailed to employees at Elmwood and Camp Road—the Re-

spondent held separate listening session for employees at those stores. Employees were scheduled to attend one of the meetings and were given individualized invitations to attend one of the two meetings. Reeve and Westlake received invitations to attend the 7 p.m. meeting, but requested and received permission from the Camp Road assistant store manager to attend the 5:30 p.m. meeting. Eisen and Fleischer received invitations to attend the 8 p.m. meeting but chose to attempted to attend the 5:30 p.m. meeting. All four were denied because they were not scheduled for the earlier meetings and told that it was a capacity issue. When Reeve and Westlake told them that there were few in attendance, the support manager shifted to the excuse that there would not be enough macaroons to pass around. In response to the capacity excuse, Eisen said it should not be a problem and offered to show Pusatier a group text indicating that four scheduled coworkers would not be coming. Pusatier, uninterested, told Eisen and Fleischer they would have to attend makeup one-one-one sessions. All four openly supported the Union. It is undisputed that that even off-duty employees were paid to attend anti-union meetings, and that off-duty employees who did not attend the meetings were not paid for that time. As employees who were permitted to attend were paid for their time but Reeve, Westlake, Eisen, and Fleischer were not paid, Respondent's refusal to permit them to attend the November 8 meetings unlawfully discriminated against them in violation of Section 8(a)(3) and (1).

The Board allows employers to exclude union supporters from meetings held during working time at which the employer expresses its opposition to unionization. *Delchamps, Inc.*, 244 NLRB 366, 367 (1979), enfd. 653 F.2d 225 (5th Cir. 1981) (collecting cases). However, in those situations, an employer may not deny pay and benefits to employees that were not invited to the meeting. Id. (violation where active and vocal prounion employees were excluded from campaign meetings where free meals were served while other employees who were not on duty were allowed to clock in and get paid to attend these meetings); see also *Wimpey Minerals USA, Inc.*, 316 NLRB 803, 803 fn.1, 806 (1995) (violation where employees were paid to attend campaign meetings, but certain employees were excluded from these meetings and were not paid). *Saisa Motor Freight*, 333 NLRB 929, 931 (2001) (violation where employees lost pay because they were excluded from campaign meeting, but no violation regarding another group of employees who were also excluded but suffered no loss of income).

Q. Prohibiting Murray from Reporting to Work [¶ 13(n)]

On November 10, Murray called off sick. On November 11, he called off sick again. On that occasion, Murray spoke with Rees, who indicated that he understood. About 90 minutes later. Rees called Murray back and said he was being placed on a COVID leave of absence for 10 days. Rees stated that he spoke with Szto who ordered the 10-day leave of absence because Murray had called out for two days. Murray then asked if a negative COVID test would circumvent the leave of absence requirement. Rees replied that it would not and Murray was out for 10 days. The action came several days after Murray disputed Szto's contentions about the Union at listening sessions and then over the dress code enforcement. The Respondent did not explain why Rees needed to inform Szto about an employee who was out two straight days with a cold. Nor did he explain why a negative COVID test would not suffice to end Murray's ten-day isolation period. In these circumstances—Murray's open union activity, Szto's knowledge thereof, and the timing between Murray's conversation with Szto about the dress code, and Szto's decision that keep Murray out of work for 10 days—I infer that the Respondent was motivated by the Respondent's well-established widespread union animus and, specifically, toward Murray's union activity. is warranted. Accordingly, the Respondent unlawfully discriminated against Murray in violation of Section 8(a)(3) and (1) of the Act.

R. Granting Gomez a Lower Seniority Wage Increase than Others Received [¶ 13(t)]

Gomez, an employee at Delaware & Chippewa for over 10 years, wore prounion pins at work and told corporate officials in listening sessions that she came from a union household and supported the Union. In October, she received a 6% annual pay increase, which was in line with the ceiling announced in July for tenured partners with over three years of service. After receiving that increase, Gomez expressed her dissatisfaction to Hunt and Mkrtumyan that the increase did not reflect the amount of work and responsibility she had at Delaware & Chippewa. Mkrtumyan acknowledged that Gomez had a point and advised her to wait for the January seniority-based wage increase, which had been announced on October 27. In January, Gomez received a seniority-based pay increase of less than a dollar more than she previously earned. Gomez was not satisfied with the amount of the increase, which was nowhere near the new ceiling of 10% that the Respondent announced in October 27. She also learned that a shift supervisor who recently transferred to her store and had been a shift supervisor for less time than her made more than she did. She expressed her dissatisfaction to Hunt and Dow. Hunt told Gomez he wished he could have done more for her, while Dow said would look into the matter but never got back to Gomez.

It is concerning that neither Dow, Hunt, nor anyone else provided Gomez with an explanation for the amount of her January pay increase. Gomez was visibly prounion and, at the time, the Respondent had been engaged in over four months of unlawful behavior in the Buffalo market revealing extreme union animus. However, the record only established that another shift supervisor with less experience made more than she did. There is no evidence as to the amount of the pay increase given to that shift supervisor or any other shift supervisor. Thus, the proof falls short of establishing that Gomez received a lower pay raise in January than other shift supervisors. Given the lack of evidence that Gomez's seniority-based pay increase was influenced by her protected activity or departed from the process used by the Respondent for all employees, the General Counsel failed to meet its burden. Therefore, allegation ¶ 13(t) is dismissed.

S. Denying Brisack's Availability and Leave Requests [¶¶13(u)-(v)]

In late January or early February, Shanley asked Brisack if it she would agree to give some of her shifts to newer employees.

Brisack agreed. Brisack also took that opportunity to reduce her availability to three days a week. Shanley approved the change, but told Brisack that she would not approve anything less than that. Brisack continued speaking to Shanley, as well as Shanley's replacement, Alameda-Roldan, about reducing her availability until she actually submitted a written request until April, at the earliest. In that request, Brisack reduced her availability to one day—Sunday mornings —but that request was denied. Since the proof did not establish that Brisack actually submit a written request until several months later, allegation ¶13(u) is dismissed.

Prior to August 23, Brisack's leave requests were always approved, with the exception of a May 21 2021 request. Brisack's leave record showed that the May 21, 2021 request to take leave on June 11, 2021, was denied five days after she submitted a request to take leave on June 29, 2021. After discussing it with Shanley, the latter request was approved. In October, Shanley approved Brisack's 15-day holiday leave request from December 19 to January 3. On February 16, however, Shanley denied Brisack's 15-day leave request, which stated, "Wedding out of town," from May 14 to 28. Brisack resubmitted that request on February 22, stating, "Attending wedding out of state." On February 26, Shanley denied the request as well, listing the reason: "Jaz you'll need to put in a LOA request. On March 14, Brisack resubmitted the request, stating, "Family commitment out of state." On March 15, Shanley denied the request with the following comment: "Jazzy, as stated before you need to contact Sedgwick and request an LOA for that amount of time off. Please let me know if you need assistance." Brisack subsequently took a leave of absence for May 14 to 18.

The Respondent contends that (1) Shanley was simply following company policy by requiring Brisack to take a leave of absence because she did not have enough leave time accrued, (2), requiring Brisack to take a leave of absence was not an adverse action because it provided Brisack with the time off that she requested, and (3) the Respondent approved Brisack's other leave requests after the campaign began. That argument lacks merit since Shanley did not require Brisack to take a leave of absence when she approved her leave request for a 15-day period in December. Nor did Brisack have accrued leave when her October request for vacation leave in December was approved. Moreover, there was no proof that Brisack would have been unable to accrue the necessary leave time between February and May 14. Finally, Shanley's actions adversely affected Brisack because a leave of absence: (1) removed her from the Respondent's system, (2) required her to go through a third-party to get a leave of absence approved, and (3) when she returned, Brisack had to follow a process to be reinstated in the scheduling system. In contrast, a vacation leave request would have simply required Shanley's approval and Brisack would not have had to do anything upon returning and resuming her regular schedule. Brisack was one of the most visible leaders of the organizing campaign, frequently disputed the Respondent's assertions about the Union at listening sessions, and was a member of the Elmwood bargaining committee. Given Brisack's protected activities, the Respondent's widespread union animus in the Buffalo area, the timing of her February requests—after the Elmwood bargaining unit was certified in December—and the lack of a legitimate explanation for suddenly denying her vacation leave requests, the Respondent failed to meet its burden of showing that it would not have denied Brisack's leave requests absent any union activity on her part. Therefore, the Respondent unlawfully discriminated against Brisack by denying her February leave requests in retaliation for her union activities in violation of Section 8(a)(3) and (1).

T. Refusing to Allow Conklin to Leave Early or Close the Store [¶ 13(w)]

On one occasion in March, Conklin was working as a shift supervisor when her mother called and asked her to go to the hospital to be with her grandfather, who was experiencing a medical emergency. With three and a half hours remaining on her shift, Conklin contacted all of the shift supervisors at East Robinson and NFB, but no one was available to cover for her. She then contacted Clark. In a prior emergency situation, the previous store manager allowed Conklin to leave the store during her shift. Although Clark did not deny a request by Conklin to leave, she said she was unable to come in because she was at a birthday party. As a result, Conklin chose to stay and finish her shift. Notwithstanding overwhelming evidence of Clark's union animus and the timing in the midst of a contentious organizing campaign at East Robinson, there is insufficient evidence to support a finding that Conklin actually asked to leave or close the store and/or the request was denied. Accordingly, allegation ¶ 13(w) is dismissed.

U. Coachings to Employees [¶ 13(q)]

As the result of the Respondent's unlawful enforcement of its policies in response to the organizing campaign, numerous employees received various levels of discipline for failing to comply with them after August 23. These usually started with the lowest form, documented coachings. On December 9, Park was issued a coaching for cursing, late arrival, and dress code violation. Prior to August 23, Park was often out of compliance with those policies but was never disciplined for any of them. On January 26, Rojas was issued a coaching for several time and attendance violations and one for failing the COVID coach upon arriving at work. Rojas was not told why an employee would be disciplined for failing the COVID coach—i.e., for being sick and unable to work. On February 25, Krempa was issued a documented coaching for wearing too many pins in violation of the dress code, something that she cleared with the store manager before August 23 and had never been disciplined. All three coachings were motivated by the Respondent's widespread union animus and stricter enforcement of its policies in retaliation for employees' support for a union, and were precursors of more discipline to follow. *Dynamics Corp. of America,* supra.

V. Verbal Warnings to Employees [¶ 13(f)]

In November, Reeve was issued a warning for wearing a Black Trans Lives Matter t-shirt. Dragic was warned for speaking with a customer, Murray. Murray was warned for refusing to sign the dress code policy. Also that month, Skretta was warned for a dress code violation. In December, Norton and

Krempa were warned for cursing. Later that month, Krempa received a final written warning for the same incident. In February, Krempa was warned for violating the pin policy. As for the rest of the aforementioned discriminatees, however, the Respondent failed to show that the aforementioned warning would have issued even absent union activity. Accordingly the Respondent unlawfully discriminated against Reeve, Dragic, Murray, Skretta, Norton, and Krempa in violation of Section 8(a)(3) and (1). See *Dynamics Corp. of America*, 286 NLRB 920, 921 (1987) citing *Keller Mfg. Co*., 237 NLRB 712, 713 fn. 7 (1978) and *Hudson Oxygen Therapy Sales Co*., 264 NLRB 61 fn. 2 (1982) (employer unlawfully issued warnings as the result of stricter enforcement of policies in retaliation for employees' support of the union). However, while there is evidence that Rizzo was issued a written warning in September, there is no evidence of a verbal warning. Therefore, allegation ¶ 13(f)(i) is dismissed.

W. Written Warnings to Employees [¶ 13(p)]

In September 20, Rizzo received a written warning for oversleeping and arriving to work 2.5 hours late on September 11. On September 14, Wright recommended to partner resources that Rizzo, having been issued a warning on August 16 for tardiness, be issued a final written warning. The partner resources representative, however, downgraded the violation to a written warning, consistent with similar downgrades that had been issued for tardiness. At Genesee Street, the store manager had a consistent practice of documenting time and attendance violations, including several by Rizzo. In these circumstances, the record supports a finding that at least a written warning would have issued for Rizzo's violation on September. On November 25, Murray was issued a written warning for violating Respondent's dress code, even though dress code violations prior to the union organizing campaign were common and unremarked upon. Prior to August 23, the most recent discipline for a dress code violation at Transit & Regal was in 2018. On January 1, Doherty was disciplined for time and attendance issues, which again were routinely ignored at Delaware & Chippewa prior to the union organizing campaign. In fact, prior to August 23, the most recent instances of discipline at that store were issued in 2019 for cash handling and safety violations. On January 2, Norton was issued a written warning for swearing, which was commonplace prior to the union organizing campaign and had not previously warranted discipline. The record showed no evidence of discipline at Transit & French prior to August 23, although there was an incident in 2020 where Scheida and another employee were coached for disrespected each other.

Given the widespread union animus exhibited by the Respondent toward the organizing campaign beginning in September and its knowledge that Murray, Doherty, and Norton openly supported the Union, the evidence supports an inference that the Respondent retaliated against these employees by more strictly enforcing its policies because of their union activities and issuing them written violations in violation of Section 8(a)(3) and (1). *Dynamics Corp. of America*, supra. However, as the written warning issued to Rizzo was consistent with the Respondent's past practice at Genesee Street, allegation ¶ 13(p)(i) is dismissed.

X. Final Written Warnings [¶ 13(h)]

In December, the Respondent cracked down on cursing at Transit & French. On December 3, Mann and Jack Morton issued Park a final written warning for swearing on November 9 and 15. On December 7, Mkrtumyan issued Krempa a final written warning for cursing on November 23. Both swore often at work in the past and had never been disciplined for such conduct. In fact, the most recent at discipline at Transit & French for similar conduct was in 2018 when the Respondent issued documented coachings to two employees who engaged in disrespectful conduct towards each other. Krempa's documentation mentioned there was union activity in Buffalo and "[t]here were standards not in place." In Krempa's case, the timing of the discipline was even more suspect given the timing—four days after Krempa testified in the representational hearing.

Cursing was also a common occurrence at Sheridan & Bailey and employees were rarely disciplined for such conduct. The only discipline for similar infractions at Sheridan & Bailey were a written warning issued to an employee for speaking poorly about a coworker on April 28, 2021, and a termination of an employee on June 17, 2021 for "making inappropriate and offensive comments sexual in nature" along with profanity. On February 18, Roux and Ruiz issued Skretta a final written warning for foul language and slamming the rear door blocked by snow.

Between January 10 and February 5, Doherty called out four times and arrived three to four minutes late on six occasions between January 10 and February 5. After February 5, she remained out several more weeks due to COVID. When Doherty returned to Delaware & Chippewa in March, Dow issued her a final written warning for calling out and tardiness. Doherty explained that Hunt informed her there was a five-minute grace period for lateness. Dow replied that such a policy never existed and disregarded Krempa's proof that Hunt approved her calling out.

The Respondent knew that Park, Krempa, Skretta, and Doherty openly supported the Union when it issued them final written warnings. Moreover, cursing had been a common occurrence at Transit & French and Sheridan & Bailey, and tardiness at Delaware & Chippewa of up to five minutes had never been a problem before. Given the widespread union animus exhibited by the Respondent toward the organizing campaign beginning in September and its knowledge that Krempa, Park, Skretta, and Doherty openly supported the Union, the evidence supports an inference that the Respondent retaliated against these employees by more strictly enforcing its policies because of their union activities and issuing them final written warnings in violation of Section 8(a)(3) and (1). *Dynamics Corp. of America*, supra. In Krempa's case, the action resulted in a Section 8(a)(4) and (1) violation since the Respondent cannot meet its burden of establishing that it would have disciplined or terminated Krempa had she not participated in the Board's processes.

Y. Terminations [¶ 13(r)]

1. Cassie Fleischer

Fleischer was visibly supportive of the Union, gave media interviews, wore prounion pins, was a member of the bargaining committee, and helped to organize a strike at Elmwood in January. On February 3, she accepted a full-time position with another company. Preferring to continue working at the Elmwood store on a part-time basis, Fleischer submitted a request reduce her availability to two days and 12 hours per week, and only on Friday nights and Saturday mornings. Shanley denied the request, telling Fleischer that "they're tightening it up with, you know, availability, all that kind of stuff." She suggested Fleischer increase her availability to 18 to 20 and/or add Sundays to her schedule, since Eisen had already been approved to work only one day a week. They met again on February 12, the same day that an Washington Post article reported an interview with Fleischer regarding the campaign. They would meet again several times but would always end at a stalemate. Shanley would tell Fleischer that scheduling her for just two days did not "fit" her needs and suggest she take a leave of absence or resign, and reapply if the new job did not work out. February 19 was Fleischer's last shift. On February 20, Shanley told Fleischer that she could not accommodate Fleischer's availability because it did not meet the needs of the company. Fleischer was no longer scheduled after February 19.

The Respondent contends that Fleischer was terminated on April 21, when it issued a letter to that effect, not February 19. I disagree. Fleischer's last shift was on February 19, and she was told that she would be termed out from the system if she was unable to meet the Respondent's new minimum availability requirement. Fleischer confirmed on February that she was unable to meet the new requirement. The Respondent in turn confirmed Fleischer's separation from its scheduling system by denying her subsequent requests to pick up shifts. Shanley further admitted that she was forced to deny Fleischer's availability request because the Respondent was "tightening" requests for availability.

Given the Respondent extreme union animus and its unlawful stricter enforcement of policies, there can be no doubt that the Respondent retaliated against Fleischer for engaging in union activity by terminating her on February 20. Furthermore, the Respondent failed to show that it would denied Fleischer's request even in the absence of her union activity. First, the Respondent continued to grant reduced availability requests, as evidenced by Eisen's reduced availability to one day a week. In that sense, the new practice was disparately applied. The fact that Eisen, also a leader of the organizing campaign, was not also terminated, does not change the result. See *NLRB v. Challenge-Cook Bros. of Ohio*, 374 F.2d 147, 152 (6th Cir. 1967) (employer's failure to discharge all union supporters "does not disprove the fact that an employee's discharge is based upon an unlawful discriminatory motive.") Second, the action constituted a unlawful unilateral change of a term and condition of employment at Elmwood at a time when the Union was the exclusive bargaining representative for Elmwood employees. Lastly, as Fleischer's termination stems from Respondent's application of the rule, her termination likewise violated Section 8(a)(3) and (1). See *St John's Community Services of NJ*, 355 NLRB No. 70 (2010) (stricter enforcement and change of work rule resulted in unlawful termination).

2. Daniel Rojas

Rojas, a Sheridan & Bailey shift supervisor, was terminated on March 4 for arriving 26 minutes late on March 2, four minutes before the store opened. He admitted that he did not let his store manager know that he would be late, even though he was the opening shift supervisor and baristas waited for him to arrive with the key. Rojas was openly prounion and engaged in union activity. Moreover, at the time of his termination, Sheridan & Bailey employees were voting on union representation. Occasional tardiness was not strictly enforced at Sheridan & Bailey prior to August 23. In fact, , the most recent discipline for tardiness there was administered to two employees in 2020. Rojas, who was not usually spoken to by his previous manager about his occasional tardiness, suddenly found himself the focus of support managers. On January 21, he was coached for tardiness and failing the COVID coach upon reporting to work. On January 26, a support manager incorporated that coaching into compilation of tardiness throughout January, and bolstered it with final written warning issued to Rojas on March 17, 2021—-nearly a year earlier—for unprofessional comments and disrespectful behavior to a barista. Such a reference was unusual, since the Respondent does not usually rely on discipline over six months in assessing subsequent violations.

Once again, the Respondent's widespread coercive actions over six months, including its unprecedented strict enforcement of time and attendance policies, and its leap from a coaching in late January to a discharge for the same violation in March, strongly point to a discriminatory motive in its discipline of Rojas in January and on March 4 because of his union activities. Furthermore, the Respondent did not meet its burden to show that Rojas would have been discharged under similar circumstances in the absence of union activity. Occasional lateness was not typically enforced. Thus, the inclusion of a final written warning that was nearly a year old only indicated that the Respondent already investigating Rojas by teeing up the demerits in order to rid itself of yet another union supporter. See *NLRB v. Esco Elevators, Inc.*, 736 F.2d 295, 299 n. 5 (5th Cir. 1984) ("A one-sided investigation into employee misconduct supplies evidence that the disciplinary action was triggered by unlawful motive.") The totality of circumstances here demonstrates that Rojas' protected activity was a motivating factor in the Respondent's decision to terminate him in the midst of an election vote at his store. See *Cardinal Home Products*, 338 NLRB 1004, 1010 (2013). In these circumstances, the Respondent unlawfully discriminated against Rojas in violation of Section 8(a)(3) and (1).

3. Edwin Park

The Respondent had knowledge of Park's union activities. He was a signatory to the August 23 letter, wore a prounion pin at work, and spoke to his store manager in November about his support for the Union. On March 9, Transit & French voted to unionize. Mkrtumyan terminated Park on March 21 for arriving seven minutes late to work on February 28 and 10 minutes late on March 5, and sticking his finger in a drink on February

25. Park admitted all three incidents, but provided plausible explanations for each one. Regarding the finger incident, he explained that two coworkers approached him with a drink and asked him for the difference between a wet and dry cappuccino. Park, thinking it was a practice drink, jokingly dipped his finger in it and said it seemed to be dry enough. They told him, however, that the drink had been made for a customer. Park had the drink thrown away and another one made. However, the dye was cast and Mkrtumyan was not interested in an explanation. She was just there to read Park the termination notice.

Once again, the evidence established that the Respondent's actions were driven by discriminatory motivation to eliminate yet another union supporter. Its widespread coercive behavior over six months had permeated every store in the Buffalo market, including Transit & French. In November, it unlawfully issued Park a final written warning for foul language, discussed supra, as the result of its stricter enforcement of its policy against swearing. An employer may not rely on prior unlawful discipline in its decision to levy further discipline on an employee. *American Tool & Engineering Co*., supra. The employer must show it would have issued the same discipline even absent the prior unlawful discipline. *Dynamics Corp.,* supra. Respondent failed to make such a showing.

The Respondent also failed to meet its burden of showing that it would have discharged Park even in the absence of his union activity. It certainly did not happen before August 23 when Park's dress and language habits left much to be desired. In fact, the only discipline at Transit & French in 2021 before the campaign began was a written warning on June 30, 2021 for time and attendance. Regardless of its past inaction, the Respondent asserts that the serious health and safety implications of sticking one's finger in another person's cup were significant enough to warrant disciplinary action. The facts indicate otherwise. The Respondent was more concerned about putting together a case against Park than immediately removing a health risk, indicating that it was not really concerned about health and safety considerations. See *Allstate Power Vac, Inc.*, supra at 347 (employer's failure to take immediate corrective action and proceed to accumulate evidence to support disciplinary action contradicted its position that "failure to wear safety equipment presented a significant risk."); *Detroit Plastic Products Co.,* 121 NLRB 448, 500 (1958) (employer's failure to take corrective action or "to present an obvious solution" to employee's allegedly problematic conduct indicated that employer was not really concerned about the employee's "welfare or interested in keeping her at work," but rather wanted to eliminate her quickly "on any pretext"), enfd. sub nom. *NLRB v. Erikson,* 273 F.2d 477 (6th Cir. 1960) (termination stemming from unlawful application of the rule violated Section 8(a)(3).) and (1); *St. John's Community Services of NJ*, 355 NLRB No. 70 (2010) (stricter enforcement and change of work rule resulted in unlawful termination).

Given the widespread union animus exhibited by the Respondent toward the organizing campaign beginning in September and its knowledge that Park openly supported the Union, the evidence supports an inference that it retaliated against Park by more strictly enforcing its policies because of his union activities and terminating him in violation of Section 8(a)(3) and (1). *Dynamics Corp. of America*, supra. Additionally, as Park's discipline resulted in part due to the Respondent's unlawful unilateral change of a term and condition of employment at Transit & French at a time when the Union was the exclusive bargaining representative for its employees, the Respondent's failure to bargain over the discipline also violated Section 8(a)(5) and (1).

4. Brian Nuzzo

Nuzzo was one of the lead organizers for the campaign in Rochester. In December, he began to organize Monroe Avenue. On February 1, Monroe Avenue employees filed a representation petition and Nuzzo's signature was the first one on the letter to CEO Johnson. He also posted the employees' letter of intent to organize on social media and participated in a press conference over the announcement. Nuzzo also told his store manager about it later that day before the news became public. On March 4, as Nuzzo and other opening shift supervisors would do on numerous occasions, he entered the store several minutes before another employee arrived and started setting up. Employees did this for several reasons, including the late arrival of the other opener, the need to use the restroom, or to get out of the cold. Once the other employee arrived, Nuzzo continued to set up without wearing a face mask until the store opened to customers. Both practices, however, violated company policies that, until March 21, were not enforced at Monroe Avenue. Moreover, on March 7, the day before Mkrtumyan pounced on the store opening and masking violations, the Respondent dropped the mask mandate.

By the time Mkrtumyan terminated Nuzzo and banned him from its stores on March 21, the Respondent was into its eighth month of widespread coercive activity throughout the Buffalo market. Nuzzo was a virtual point man for the campaign in Rochester and his store threatened to lead the way. The Respondent had now expanded its reign of coercion into Rochester and its unlawful motivation for terminating Nuzzo was clear—apply previously unenforced rules to eliminate union supporters. Furthermore, the Respondent did not meet its burden to show that it would conducted a similar investigation had Nuzzo not been a union supporter. As Mkrtumyan proved, district managers have direct access to store opening information, yet never responded to similar infractions in the past—a fact established by the absence of such proof in the repository of past discipline produced by the Respondent. Mkrtumyan declined to meet with Nuzzo so he could explain why he lied to Tollar, acting at her behest, about the incident, and she disregarded the fact that the mask mandate had already been dropped by March 21. See *Lucky Cab Co.*, 360 NLRB 271, 274 fn. 13 (2014) (denying discharged employees the opportunity to explain their alleged misconduct is evidence of pretext); *Alstyle Apparel*, 351 NLRB 1287, 1288 (2007) (decision to discharge employees before giving them an opportunity to explain the allegations against them supports a finding the discharges were discriminatorily motivated and not based upon a reasonable belief of misconduct). Finally, that Nuzzo lied about the events of March 4, insulted the support manager who delivered the termination notice with a profanity-laced tirade and cruel commentary, and shoved a pastry cart on the way out,

did not justify an investigation that was unlawful in the first place. See *Supershuttle of Orange County, Inc.*, 339 NLRB 1 (2003) (employee misconduct discovered during investigation motivated by employee's protected activity did not render unlawful action lawful); *Kiddie, Inc.*, 294 NLRB 840, 840 fn. 3 (1989) (bad faith by employer did not give it "good cause" to discipline employee).

Given the widespread union animus exhibited by the Respondent toward the organizing campaign beginning in September, its knowledge that Nuzzo openly supported the Union, and the compelling evidence that it retaliated against him by strictly enforcing its policies because of his union activities, the Respondent unlawfully terminated and banned Nuzzo from its stores in violation of Section 8(a)(3) and (1).

5. Nathan Tarnowski

Even before he openly expressed his support for the Union at East Robinson in January, Clark told Conklin to keep him an eye on him. Clark's union animus towards Tarnowski's union activities was well established. As noted above, the Respondent was already into its eighth month of widespread coercive activity in the Buffalo market. At East Robinson, Clark was at the forefront of that onslaught. On March 23, Clark was assisted by Pool, the NFB store manager. Tarnowski completed the COVID coach but omitted symptoms that he regularly experienced, including diarrhea. He was not feeling well, though, and told his supervisor that he would seek to leave once the store was adequately staffed. When the opportunity arose, Tarnowski's shift supervisor gave him permission to leave. However, Pool overheard, and a contentious exchange over his symptoms followed. In sum, she produced a false report of that exchange, including omitting the fact that Tarnowski was not experiencing symptoms that were "out of the ordinary or unusual for him." Tarnowski then went home, returned the next day and Pool sent him home again, telling him that he needed to be symptom-free for at least 24 hours. When he returned to work on March 25, he asked Clark if he was going to be discharged over the incident with Pool. Clark said no. On December 30, Clark handed Tarnowski a termination notice.

In these circumstances—the false report and the Respondent's failure to explain why it terminated Tarnowski a few days after telling him otherwise—the Respondent's discriminatory motivation became evident. See, e.g., *Metropolitan Transportation Services*, 351 NLRB 657 (2007) (failure to explain about-face in deciding to discharge employee found to be pretextual).

Furthermore, because the reasons stated for terminating Tarnowski were false, the Respondent failed to establish that it would have terminated Tarnowski even in the absent his union activity. See *Cox Communications Gulf Coast, LLC*, 343 NLRB 164, 164 (2004) (when an employer's stated reason for discharging an employee is knowingly false, the employer has failed by definition to demonstrate that the employee would have been discharged absent union activity). Additionally, the record lacks any examples of previous discipline in circumstances based on an employee's omission of symptoms from the COVID coach. Indeed, Dragic and Lerczak, experiencing coughing and dizziness, respectively, were sent home, not fired, after failing to enter those symptoms in the COVID coach. Moreover, the record demonstrated that employees, including Tarnowski, often worked while they were not feeling well, and were not terminated.

Given the widespread union animus exhibited by the Respondent toward the organizing campaign beginning in September, its knowledge that Tarnowski openly supported the Union, and the compelling evidence that it retaliated against him by strictly and erroneously enforcing its policies against him because of his union activities, the Respondent unlawfully terminated Tarnowski in violation of Section 8(a)(3) and (1).

6. Angel Krempa

By the time the Respondent terminated Krempa for time and attendance violations on April 1, it was into its ninth month of its coercive campaign in the Buffalo market. Transit & French had voted to unionize two weeks earlier, and the Respondent had saddled Krempa with a slew of unlawful disciplines for time and attendance, foul language, and dress code violations. The final written warning also violated Section 8(a)(4). The Respondent's animus towards her union activity was well established. Furthermore, the Respondent failed to show that it would have discharged Krempa even in the absence of such activity since the termination relied on a recent history of unlawful discipline motivated by her union activity. Moreover, the termination relied on two instances of lateness for which Krempa produced legitimate explanations, but were disregarded by the Respondent. Nor did a manager ever ask Krempa what happened on those two occasions. See *B&B Safety System, LLC*, 370 NLRB No. 90, slip op. at 1 (2021) (failing to meaningfully investigate before deciding to discharge prounion employee was evidence of pretext).

Given the widespread union animus exhibited by the Respondent toward the organizing campaign beginning in September, and its knowledge that Krempa openly supported the Union and participated in the Board processes by testifying on behalf of the Union, the evidence supports inferences that it retaliated against Krempa by more strictly enforcing its policies because of Krempa's union activities and terminating him in violation of Sections 8(a)(3), (4) and (1). *Dynamics Corp. of America*, supra. Additionally, as Krempa's discipline resulted from the Respondent's unlawful unilateral change of a term and condition of employment at Transit & French at a time when the Union was the exclusive bargaining representative for its employees, the Respondent's failure to bargain over the discipline also violated Section 8(a)(5) and (1).

7. Kellen Higgins

Higgins was active in the union campaign, wore a prounion pin at work, spoke with the media regarding his support for the Union, and told Shanley as much when she pointed to his pin later that day. Higgins, a college student, regularly worked full-time in between semesters but always had his request for reduced availability to two days—Thursday and Saturday—accommodated when school resumed. When Higgins started

graduate school in September, Shanley approved his request to reduce his schedule to one day per week on Saturdays. During the school break in December, Shanley approved Higgins' customary request to work full-time until school resumed in January. At some point during the break, Higgins submitted a request to work days a week when school resumed. However, she cancelled that request on January 25 and resubmitted an availability request for just Saturdays since his schedule included classes on Thursdays. On February 7, Shanley told Higgins that he was not terminated but there was an issue with his availability. She informed Higgins that the Respondent implemented a minimum availability of two days, as well as 20 hours per week because the store was in its "off-season" and the company was "cutting" hours. Shanley also added that she was unwilling to pull the hours from employees who were willing to work more than 30 hours for someone who was only willing to work one day a week. Higgins replied that 20 hours weekly minimum was new and suggested that the hours be cut from every partner equally in order to accommodate his availability. Shanley told Higgins he had three options—increase his availability, take a leave of absence, or resign. Higgins replied that he could not work that many hours with his school schedule. Shanley replied that she knew he could not. Thereafter, Higgins was no longer regularly scheduled for any sifts. Shanley did, however, offer Higgins, and he accepted, several Saturday shifts in February and March. They would meet again in March, where Shanley reiterated the minimum availability requirements. Higgins mentioned Eisen's accommodation to one day a week but Shanley replied that Eisen's schedule was based on a "historical agreement." Shanley again urged Higgins to add Thursdays and it "could be sporadic," while Higgins considered his options. Higgins agreed.

After that meeting, Shanley went on vacation. She returned in mid-March and called Higgins. Shanley pressed him for one more day of availability. Higgins offered more availability on Thursday and Friday, "but it could not be every Friday," and Shanley put him on the schedule. On April 2, Higgins, having concluded that he could not satisfy the Respondent's 20-hour weekly minimum availability, met with Shanley and delivered his two-week notice, effective April 16.

There are two elements to a constructive discharge analysis. First, "the burdens imposed on the employee must cause, and be intended to cause, a change in working conditions so difficult or unpleasant as to force the employee to resign." Second, "the burdens must have been imposed because of the first element will be established if the employer "reasonably should have foreseen" that it should have thought the employee would quit. *American Licorice Co.*, 299 NLRB 145, 148 (1990). The Board has found that it is reasonably foreseeable that elimination of a reduced-hours schedule would create a hardship sufficient to result in resignation. *North Carolina Prisoner Legal Services*, 351 NLRB at 470, citing *Yellow Ambulance Services*, 342 NLRB 804, 807 (2004) (requiring an employee to choose between work and family obligations is sufficiently burdensome to support a finding of constructive discharge).

The proof established that Higgins was constructively discharged. The Respondent reasonably foresaw that requiring Higgins to open his availability while in graduate school would force him to resign. Shanley knew that Higgins was an employee who would work as many hours as he could during semester breaks and then have to reduce his availability commensurate with his class schedule. She knew as much when she approved his request to work only one day a week during the Fall 2021 semester. Moreover, as I previously found, the Respondent unlawfully implemented the new minimum availability policy in retaliation to the union campaign and had already enforced it when Fleischer, also a union supporter, made a similar request. As in their cases, the Respondent neither notified the Union nor gave it an opportunity to bargain over the February change to its availability policy that caused Higgins to resign.

Given the widespread union animus exhibited by the Respondent toward the organizing campaign, its knowledge that Higgins openly supported the Union, and its unilateral change of Elmwood employees' term and condition of employment at a time when the Union was the exclusive bargaining representative for its employees, the preponderance of the evidence established that the Respondent discriminated against Higgins by denying his request for reduced availability in violation of Sections 8(a)(3), (5) and (1).

Z. Bargaining Order at Camp Road

The General Counsel's request for an order granting the extraordinary remedy of a bargaining order designating the Union as the legal representative of Company's employees must be analyzed under *NLRB v. Gissel Packing Co*., 395 U.S.575, 610. In *Gissel*, the Supreme Court held that a bargaining order is warranted when "an employer has committed independent unfair labor practices which have made the holding of a fair election unlikely or which have in fact undermined a union's majority and caused an election to be set aside." Id. The traditional remedy for unfair labor practices is to hold an election once the atmosphere has been cleared of past misconduct; a bargaining order thus is an extraordinary remedy applied when it is unlikely that the atmosphere can be cleansed. *Aqua Cool*, 332 NLRB 95, 97 (2000). The issuance of a bargaining order seeks to balance the rights of employees who favor unionization, and whose majority strength has been undermined by the employer's unfair labor practices, against the rights of those employees opposing the union who may choose to file a decertification petition at the appropriate time pursuant to Section 9(c)(1). See *Overnite Transportation Co.*, 329 NLRB 990, 990, 996 (1999).

In *Gissel*, the Supreme Court identified two categories of employer misconduct that warrant imposition of a bargaining order. Category I cases are "exceptional" and "marked by 'outrageous' and 'pervasive' unfair labor practices." 395 U.S. at 613. Consideration of a bargaining order examines the nature and pervasiveness of the employer's practices. *Holly Farms Corp.*, 311 NLRB 273, 281 (1993) (citing FJN Mfg., 305 NLRB 656, 657 (1991). Category II cases are "less extraordinary" and marked by less pervasive practices which nonetheless still tend to undermine majority strength and impede the election processes." Id. at 614. In category II cases, the "possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and . . . employee sentiment once expressed

through cards would, on balance, be better protected by a bargaining order." Id. at 614–615; see also *California Gas Transport*, 347 NLRB 1314, 1323 (2006), enfd. 507 F.3d 847 (5th Cir. 2007).

The Union has met its burden in proving the merits of its objections in Case 03–RC–2822127, which mirror the events encompassed in the 95 unfair labor practices found. Thus, there is no doubt that the results of the fairly close election must be set aside. Considering the impact of the unfair labor practice violations, it is evident that the traditional Board remedies—a rerun of the election, a cease and desist order, and a notice posting—would be insufficient under the circumstances. The aforementioned 8(a)(1), (3), (4) and (5) violations constituted overwhelming evidence of conduct by the Respondent during the three months leading up to the election which eroded the ideal conditions necessary to facilitate the free choice of employees and determine their uninhibited desires. *Jensen Enterprises*, 339 NLRB 877 (2003); *Robert Orr-Sysco Food Servs.,* 338 NLRB 614 (2002) (narrowness of the vote is a factor); *Clark Equipment Co*., 278 NLRB 498, 505 (1986) (factors include the number of violations, their severity, the extent of dissemination, the size of the unit and other relevant factors); *Playskool Mfg. Co.*, 140 NLRB 1417 (1963); *General Shoe Corp.,* 77 NLRB 124 (1948).

The Camp Road representation petition filed on August 31 was based on authorization cards signed by 16 out of the 29 or 30 employees in the voting unit, a two or three card majority. The tally of ballots from the December 9 election totaled 20, with 12 employees voting against representation and 8 employees in favor. The Respondent, relying on the testimony of one witness, Spicola, contends that there was anti-union sentiment at Camp Road. It also points to the Union's success in the two other elections on December 9, at Elmwood and Genesee Street, as proof that any unfair labor practices on its part had no impact on any voting units that day.

The relevant inquiry here, where the Union had a card majority at the time it filed a representation petition, warrants a *Gissel* Category II analysis based on the "'seriousness of the violations and the pervasive nature of the conduct, considering such factors as the number of employees directly affected by the violations, the size of the unit, the extent of the dissemination among employees, and the identity and position of the individuals committing the unfair labor practices.'" *Hogan Transports, Inc*., 363 NLRB 1980, 1986 (2016) (quoting *Intermet Stevensville*, 350 NLRB 1349, 1359 (2007)).

From August 23 through the election and beyond, the Respondent committed numerous unfair labor practices at Camp Road and throughout the Buffalo market, most of which are likely to remain in the employees' minds of Camp Road and make it extremely unlikely that a fair rerun of the election could ever be held. See *California Gas Transport, Inc.*, 347 NLRB 1314 (2006) enfd. 507 F.3d 847 (3d Cir. 2007) (interaction between unit and non-unit employees meant discharges of non-unit employees would have lasting impact on unit employees). However, the Respondent's conduct before and after the critical period is also relevant in considering whether the holding of a fair election in the future is possible. See *Alumbaugh Coal Corp.*, 247 NLRB 895, 914 fn. 41 (1980), enfd. in pert. part 635 F.2d 1380 (8th Cir. 1980) (in determining whether a Gissel bargaining order is appropriate, the Board reviews all the unfair labor practices committed by the respondent, not just those committed during the critical period).

These violations include: the termination of seven multiple prounion employees; the permanent closure of one store and the temporary closure of others; an unprecedented, nationwide seniority-based wage increase that it enacted in response to complaints at listening sessions; pervasive close monitoring of employees and stricter enforcement of rules at virtually every Buffalo-area store; the grant, promise, and withdrawal of numerous benefits; repeated solicitation of grievances, numerous company meetings at Camp Road and other stores and hotel venues where Camp Road employees heard the Respondent's promise, grant, and threaten them and employees from other stores; threats; interrogations; and surveillance of employees' union activity. The seven terminations, Galleria kiosk closure, and wage increase are in fact the very type of "hallmark violations" that require a bargaining order to appropriately remedy. *Evergreen America Corp.*, 348 NLRB 178, 180 (2006) enfd. 531 F.3d 321 (4th Cir 2008) (granting of wage increase a hallmark violation). Hallmark violations can justify a finding, without extensive explanation, that they will have a lasting negative and coercive effect on the workforce and remain in the memory of employees for a long time. Id; see also *NLRB v. General Wood Preserving Co.*, 905 F.2d 803, 822 (4th Cir. 1990).

Even absent the hallmark violations, the sheer number of the remaining violations warrants a bargaining order. The Respondent committed hundreds of unfair labor practices, including assigning support managers to stores to ensure that a manager was present at all times in order to surveil employees and discourage union activity. *Evergreen America Corp.,* supra (appropriate to rely in part on numerous and serious non-hallmark violations). The unprecedented incursion of the Respondent's highest-level corporate executives into Buffalo-area stores was relentless and likely left a lasting impact as to the importance of voting against representation. See *Michael's Printing, Inc.,* 337 NLRB 860, 861 (2002) (employees are unlikely to forget employer's antiunion stance when direct highest level of management directly involves them in the commission of unfair labor practices). Finally, the Union's loss of support at Camp Road also favors the issuance of a *Gissel* bargaining order. In the first week of the union organizing campaign, the Union obtained signed authorization cards from 16 Camp Road employees. By the time the votes were tallied, support for the Union dropped by half. This precipitous decline in support strongly indicates that the Respondent's unfair labor practices had their intended effect.

The Board and courts look to four factors when evaluating the propriety of a bargaining order: the passage of time; turnover; timing; and dissemination. In this case, all four factors militate in favor of a bargaining order. "The Board's established practice is to evaluate the appropriateness of a *Gissel* bargaining order as of the time that the unfair labor practices occurred; changed circumstances following the commission of the violations are generally not considered. *Milum Textile Services Co.*, 357 NLRB 2047, 2056 (2011). The Board assesses

the necessity of a bargaining order as of the time of the Respondent's unfair labor practices and has not considered subsequent employee turnover as a factor, as doing so would "reward, rather than deter, an employer who engaged in unlawful conduct during an organizing campaign." *Electro-Voice, Inc.*, 321 NLRB 444, 444 (1996). Any potential turnover at Camp Road should not be considered an impediment to a bargaining order. The Board presumes that newly hired employees will support the Union in the same ratio as the employees they replace. *Alexander Linn Hospital Association*, 288 NLRB 103, 108 (1988) (citing *Laystrom Manufacturing Co.*, 151 NLRB 1482 (1965); *Mimbres Memorial Hospital*, 342 NLRB 398, 403 (2004); see also *Glover Bottled Gas Corp.*, 292 NLRB 873, 886 (1989) (Board finds "no reason to believe that as a result of the unit expanding, a majority of employees no longer wished to be represented by the Union.").

With regard to turnover, some of the Respondent's witnesses referred to Williams as a former employee, but many of the other officials from the Williams team were still around to testify, including Pusatier, Mkrtumyan, Case, and Murphy. Nor was there evidence of a significant employee turnover at Camp Road. The timing here also favors issuance of bargaining order. The election was conducted 14 months ago, which is not an excessive amount of time under Board precedent. See *Evergreen America Corp.*, 348 NLRB at 182 (four years); *NLRB v. Intersweet Inc.*, 125 F.3d 1064, 1069 (7th Cir. 1997) (three years); *Parts Depot, Inc. v. NLRB*, 24 Fed. Appx. 1 (D.C. Cir. 2001) (six years)

Finally, the extent of dissemination of the unfair labor practices throughout the bargaining unit is a is a factor to consider in determining whether a bargaining order is appropriate. *Cardinal Home Products, Inc.*, 338 NLRB 1004, 1010–11 (2003) ("The Board considers the extent of the dissemination of serious unfair labor practices to employees not personally affected by them, in determining whether the unlawful conduct created a 'legacy of coercion' that was likely to have poisoned the atmosphere in which any new election would take place."). The Respondent disseminated its unfair labor practices beyond the Buffalo market by announcing and implementing a nationwide wage increase[443] and issuing a nationwide bulletin addressing Cassie Fleischer's termination.

Under the circumstances, a *Gissel* bargaining order is warranted as the Respondent's extensive and pervasive antiunion campaign resulted in a loss of support and, ultimately, the Union's loss of the December 9 election at Camp Road.

[443] While the seniority-based wage increase was unlawfully motivated by the union activity in the Buffalo market, it had a national reach. With Eisen, Brisack, and other union supporters fielding calls of interest from employees throughout the country, the Respondent's action had the dual effect of influencing future union activity beyond the Buffalo market. By immediately sending Williams and a battalion of corporate executives to Buffalo-area stores and keeping them there through the elections acknowledged as much. Indeed, the first of many petitions outside of Buffalo would be filed in Phoenix, Arizona on November 18. (R. Exh. 322 at 5.)

CONCLUSIONS OF LAW

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

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

3. The Respondent violated Section 8(a)(1) of the Act by:

(a) Soliciting complaints and grievances from employees in response to union activity.

(b) Promising employees increased benefits and improved terms and conditions of employment in response to union activity.

(c) Promising to renovate stores in response to union activity.

(d) Promising to convert stores to drive-through-only locations in response to union activity.

(e) Promising to provide mental health counselors for in-person consultations in response to union activity.

(f) Announcing seniority-based wage increases in response to union activity.

(g) Granting seniority-based wage increases in response to union activity.

(h) Promising to improve store conditions, including upgrading and replacing equipment, in response to union activity.

(i) Engaging in surveillance of employees who are participating in union activity.

(j) Photographing employees engaged in union activity.

(k) Stationing additional managers at stores in order to more closely supervise, monitor, or create the impression that employees' union activities are under surveillance.

(l) Scheduling managers to work during all operational hours at stores to more closely supervisor, monitor, or create the impression that employees' union activities are under surveillance.

(m) Having high-ranking company officials make repeated and unprecedented visits to stores in order to more closely supervise, monitor, or create the impression that employees' union activities are under surveillance.

(n) Prohibiting employees from discussing their wages with one another.

(o) Removing the ability of store managers to hire employees in response to union activity.

(p) Transferring store managers' hiring abilities to dedicated recruiters in response to union activity.

(q) Monitoring employees' conversations on company headsets in response to union activity.

(r) Temporarily transferring employees to stores with upcoming union votes in an attempt to pack the voting unit.

(s) Hiring additional employees in stores with upcoming union votes in an effort to dilute support for the Union.

(t) Overstaffing stores with upcoming union votes in an effort to dilute support for the Union.

(u) Interrogating employees about their union activities.

(v) Interrogating employees about their protected concerted activities.

(w) Restricting employees from posting union literature at stores where the posting of other types of literature is permitted.

(x) Hiring additional employees in an attempt to remedy grievances that were unlawfully solicited.

(y) Centralizing the training of new hires in an attempt to remedy grievances that were unlawfully solicited.

(z) Making facilities improvements at stores in an attempt to remedy grievances that were unlawfully solicited.

(aa) Permitting shift supervisors to disable mobile ordering, close store cafés, and close stores in an attempt to remedy grievances that were unlawfully solicited.

(bb) disabling mobile ordering in an attempt to remedy grievances that were unlawfully solicited.

(cc) Authorizing additional hours of labor or offering additional hours to employees in an attempt to remedy grievances that were unlawfully solicited.

(dd) Arranging for additional training in an attempt to remedy grievances that were unlawfully solicited.

(ee) Increasing the timeliness with which Respondent posts schedules in an attempt to remedy grievances that were unlawfully solicited.

(ff) Changing training procedure for new hires.

(gg) Threatening employees with the loss of the ability for managers to work on the floor of their stores in response to union activity.

(hh) Threatening employees with the loss of a direct relationship with management in response to union activity.

(ii) Threatening that employees would not be able to pick up shifts at other stores in response to union activity.

(jj) Telling employees that it will not offer additional benefits in contract negotiations with the Union in response to union activity.

(kk) Threatening employees with the withholding of new benefits if they elected the Union as their bargaining representative.

(ll) Threatening employees with the loss of the ability to react quickly in emergency

situations if they elected the Union as their bargaining representative.

(mm) Threatening employees with discipline or reprisal for engaging in protected concerted activity.

(nn) Instructing employees to engage in surveillance of other employees' union activities.

(oo) Instructing employees to report other employees' union activities to us.

(pp) Threatening to implement a new minimum availability requirement in response to union activity.

(qq) Prohibiting employees from discussing the Union with off-duty employees while permitting conversations with off-duty employees about other non-work subjects.

(rr) Prohibiting employees from discussing the Union with customers while permitting conversations with customers about other non-work subjects.

(ss) Threatening employees that they will not receive raises if they selected the Union as their bargaining representative.

(tt) Threatening employees with reprisals for engaging in union activity.

4. Respondent violated Section 8(a)(3) and (1) of the Act, by engaging in the following conduct:

(a) More strictly enforcing the Dress Code & Personal Appearance policy in response to union activity.

(b) Enforcing the Dress Code & Personal Appearance policy more stringently against union supporters.

(c) More strictly enforcing the Attendance & Punctuality policy in response to union activity.

(d) Enforcing the Attendance & Punctuality policy more stringently against union supporters.

(e) More strictly enforcing the Soliciting/Distributing Notices policy in response to union activity.

(f) Disparately enforcing the Free Food Item and Beverages While Working policy against union supporters.

(g) More strictly enforcing the COVID log policy against union supporters.

(h) More strictly enforcing the Partners Not Working While Ill policy against union supporters.

(i) More strictly enforcing policies regarding the making of drinks in response to union activity.

(j) Reducing the operational hours of stores in response to union activity.

(k) Temporarily closing stores in response to union activity.

(l) Extending the closure of stores indefinitely in response to union activity.

(m) Permanently closing the Walden Galleria Kiosk in response to union activity.

(n) Eliminating a free food benefit for employees in response to union activity.

(o) Transferring responsibility for scheduling employees from store managers to support managers in response to union activity.

(p) Transferring responsibility for promoting employees from store managers to support managers in response to union activity.

(q) Requiring employees to obtain managerial approval before picking up shifts at other stores in response to union activity.

(r) Requiring employees to pay for parking at company-sponsored events in response to union activity.

(s) Reducing the hours of work of employees in response to union activity.

(t) Disconnecting direct phone lines to stores in response to union activity.

(u) Instituting a requirement that employees stand in line to order food and drinks during their breaks in response to union activity.

(v) Instituting a requirement that employees maintain minimum availability to retain employment in response to union activity.

(w) Prohibiting employees from using a third-party chat platform to switch shifts in response to union activity.

(x) Refusing to permit shift supervisors to close the cafés of stores in response to union activity.

(y) Refusing to permit shift supervisors to disable mobile ordering in response to union activity.

(z) Promoting employees in response to union activity.

(aa) Refusing to consider employees for promotion in response to union activity.

(bb) Disciplining employees in response to union activity.

(cc) Firing employees Cassie Fleischer, Angel Krempa, Nathan Tarnowski, Edwin Park, Brian Nuzzo, and Daniel Rojas, Jr. in response to union activity.

(dd) Refusing to assign employees to a home store in response to union activity.

(ee) Reducing the shifts on which shift supervisors are assigned as play callers in response to union activity.

(ff) Refusing to allow union supporters to train new employees.

(gg) Randomizing employees' shifts in response to their union activities.

(hh) Refusing to consider employees' applications for promotion in response to union activity.

(ii) Isolating prounion employees by refusing to permit them to attend paid anti-union meetings.

(jj) Prohibiting employees from reporting to work because of their union activity.

(kk) Prohibiting employees from picking up shifts at other stores because of their union activity.

(ll) Investigating employees because of their union activity.

(mm) Providing employees with diminished wage increases because of their union activity.

(nn) Denying employees' leave requests because of their union activities.

(oo) Denying employees' requests to leave work early to close a store early to handle an emergency in response to union activity.

(pp) Banning employees from all locations in response to their union activity.

(qq) Refusing to transfer employees because they engaged in union activity.

(rr) Delaying employees' transfers because they engaged in union activity.

(ss) Constructively discharging employee Kellen Higgins by enforcing a new minimum availability requirement because they engaged in union activities or because they support the union.

5. The Respondent violated Section 8(a)(4) and (1) of the Act by:

(a) Disciplining employee Angel Krempa because Krempa gave testimony to the National Labor Relations Board.

(b) Discharging employee Angel Krempa because Krempa gave testimony to the National Labor Relations Board.

6. The following employees of the Respondent (the Camp Road Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its 5120 Camp Road, Hamburg, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

7. Since August 30, 2021, a majority of the employees in the Camp Road Unit signed union authorization cards designating and selecting the Union as their representative for the purposes of collective bargaining with Respondent.

8. Since August 30, 2021, and continuing to date, the Union has been the representative for the purpose of collective bargaining of the employees in the above-described Camp Road Unit and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

9. The Respondent has violated Section 8(a)(5) and (1) of the Act by:

(a) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of all employees in the above-described Camp Road Unit.

(b) The Respondent has violated Section 8(a)(5) and (1) of the Act by changing employees' terms and conditions of employment by implementing a minimum employment policy without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

(c) The Respondent has violated Section 8(a)(5) and (1) of the Act by using discretion to discharge employees in bargaining units represented by the Union without first notifying the Union and giving it an opportunity to bargain.

10. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

The Respondent, having discriminatorily discharged employees Cassie Fleischer, Daniel Rojas, Jr. , Edwin Park, Brian Nuzzo, Nathan Tarnowski, and Angel Krempa, and constructively discharged Kellen Higgins, must offer them reinstatement and make them whole for any loss of earnings and other benefits. 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 No. 8 (2010). The Respondent shall also make employees Kaitlyn Baganski, Mikaela Jazlyn Brisack, Colin Cochran, Róisín Doherty, Danka Dragic, Michelle Eisen, Cassie Fleischer, Iliana Gomez, Cory Johnson, Angel Krempa, Caroline Lerczak, Kellen Higgins, Ryan Mox, Brian Murray, Nicole Norton, Brian Nuzzo, Erin O'Hare, Edwin Park, Gianna Reeve, Elissa Pfleuger, Joshua Pike, Alexis Rizzo-Kruckow, Daniel Rojas Jr., James Skretta, Nathan Tarnowski, William Westlake, and all unit employees affected by the unlawful unilateral change in terms and conditions of employment, on and after August 23, 2021, whole in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest as set forth in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra, for the consequential harm they incurred as a result of Respondent's unlawful conduct.

In addition, in accordance with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall compensate the aforementioned discriminatees for any direct or foreseeable pecuniary harms incurred as a result of the unlawful adverse actions against them, including reasonable search-for-

work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons,* supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatee(s) for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than one year, *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

The Order includes a bargaining order for the Camp Road store, requires it to bargain in good faith with the bargaining units over any changes to employees' terms and conditions of employment, and to restore the operations at the Galleria kiosk. Because of the Respondent's egregious and widespread misconduct demonstrating a general disregard for the employees' fundamental rights, I also find it necessary to issue a broad Order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). Finally, because of the nationwide reach of the Respondent's numerous unfair labor practices, it shall be required to take affirmative steps, including physically post the Notice to Employees at all of its facilities in the United States and its Territories and require the Notice to be posted for the length of the organizing campaign and distribute the Notice to Employees and the Board's Orders to current and new supervisors and manager.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[444]

ORDER

The Respondent, Starbucks Corporation, Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting employee complaints and grievances, and promising its employees increased benefits and improved terms and conditions of employment if they refrained from union organizational activity.

(b) Promising employees increased benefits and improved terms and conditions of employment if they refrained from union organizational activity, by promising extensive store renovations, promising store conversion to a drive-thru and mobile ordering store, announcing that mental health counselors would be available for in-person consultations, informing employees that a seniority-based wage increase was granted in response to organizing efforts, informing employees it would be granting a seniority-based wage increase to all of its United States-based employees, and by repeatedly promising to expand the size of the store.

(c) Engaging in surveillance by photographing an employee wearing a union pin.

(d) Engaging in surveillance and/or creating the impression of surveillance of employees by stationing support managers at all stores, having high-ranking officials make unprecedented and repeated visits to each store, scheduling managers at stores during all operational hours, removing the ability of store managers to hire employees thereby increasing their ability to surveille their employees' union activities, and by monitoring employees' conversations on headsets.

(e) Prohibiting employees from talking about their wages.

(f) Interrogating employees regarding their protected concerted and/or union activity.

(g) Restricting employees from posting union literature.

(h) Using employees temporarily transferred from other stores for the purpose of

dissipating the Union's support in an appropriate bargaining unit.

(i) Hiring new employees to work in stores with upcoming union votes for the purpose

of dissipating the Union's support in an appropriate bargaining unit.

(j) Overstaffing stores with upcoming union votes for the purpose of dissipating the Union's support in an appropriate bargaining unit.

(k) Granting employee benefits, increasing employee benefits, and/or remedying grievances to discourage employee union support.

(l) Implementing a seniority-based wage increase to all its United States-based employees to discourage employee union support.

(m) Threatening employees with loss of benefits if they selected the union as their bargaining representative.

(n) Threatening employees with discipline for engaging in protected concerted activity.

(o) Threatening employees with reprisals to discourage employee union support.

(p) Instructing employees not to allow employees from prounion, petitioning, and/or unionized stores to pick up shifts.

(q) Instructing employees to surveil and report coworkers who engaged in union activity.

(r) Threatening to impose more onerous and rigorous terms and conditions of employment on its employees by announcing a minimum availability requirement.

(s) Prohibiting employees from talking about the union with off-duty employees

and/or customers while permitting employees to talk with off-duty employees and customers about other nonwork subjects.

(t) Remedying grievances or attempting to remedy grievances by authorizing additional hours of labor, offering additional hours of work, arranging for additional training for employees, hiring additional employees, making facilities and equipment upgrades, permitting shift supervisors to shut down mobile ordering, permitting shift supervisors to close store cafés, permitting shift supervisors to close stores, increasing the frequency at which employee schedules are posted, and

[444] 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.

disabling mobile ordering.

(u) Threatening employees with the loss of a direct relationship with management.

(v) Threatening employees with the loss of the ability to have managers work alongside them on the floor of stores.

(w) Threatening employees that they would not receive additional wage increases and/or benefits in contract negotiations and that future benefits would be withheld if they elected the Union.

(x) Threatening employees with the loss of the ability to pick up shifts if they selected the Union as their bargaining representative.

(y) Threatening employees with the loss of the ability to react quickly in emergency situations if they selected the Union as their bargaining representative.

(z) Refusing to hire new employees to discourage employee union support.

(aa) Strictly enforcing rules and policies that it did not strictly enforce prior to the filing of a representation petition.

(bb) Retaliating against employees to discourage employee union support by reducing the operational hours of its stores, temporarily and/or permanently closing its stores, closing stores early to hold anti-union meetings, transferring responsibility for hiring employees from store managers to dedicated recruiters, centralizing training for Buffalo facilities, transferring responsibility for scheduling employees and/or promoting employees to support managers, closing stores early thereby reducing the compensation of its employees, requiring employees to pay for parking at a company-sponsored event, rescinding a promise to convert a store to a drive-thru and mobile ordering location, refusing to permit shift supervisors to close a store's café, refusing to permit shift supervisors to disable mobile ordering, and increasing employees' scheduled hours.

(cc) Imposing more onerous and rigorous terms and conditions of employment to discourage employee union support by eliminating the free food item benefit, requiring that employees get managerial approval before picking up shifts at other stores, more strictly enforcing its policies for making drinks, disconnecting the direct line for its store located at the Genesee Street store, requiring that employees stand in the customer ordering line to order food while working, requiring that employees offer minimum scheduling availability to retain employment, and prohibiting employees from using a third-party group chat to switch shifts.

(dd) Retaliating against employees because they engaged in union activities or because they support the union by promoting employees, refusing to allow employees to train new employees, refusing to approve or delaying the approval of employees' transfer to another store, refusing to assign employees a home store, reducing "play caller" shifts, refusing to permit union supporters to train new employees, sending home employees prior to the end of their shifts, imposing more onerous and rigorous terms and conditions of employment on employees by randomizing their shifts, reducing the work hours of employees, refusing to consider employees for a promotion to shift supervisor, refusing to permit employees to attend antiunion meetings thereby isolating them, prohibiting employees from reporting to work, refusing to allow employees to work shifts at another store, investigating employees, granting employees a lower seniority wage increase than other employees received, denying employee requests to reduce their availability to two days, denying employee leave requests, refusing to allow employees to leave the store early or close the store early to handle an emergency, and banning employees from all of Respondent's stores.

(ee) Disciplining and/or discharging employees because they engaged in union activities or because they support the union.

(ff) Disciplining and/or discharging employees because they testified at a Board hearing.

(gg) Constructively discharging employees by enforcing a new minimum availability they engaged in union activities or because they support the union.

(hh) Unilaterally implementing changes affecting employees' wages, hours, or other terms and conditions of employment without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

(ii) Discharging or otherwise disciplining employees without first notifying and bargaining with the Union.

(jj) Refusing to recognize and bargain with Workers United (the Union) as the exclusive collective-bargaining representative of the employees in the following appropriate unit (Camp Road Unit):

> All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its 5120 Camp Road, Hamburg, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

(kk) In any like or other 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) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit (Elmwood Unit) concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and part-time Baristas and Shift Supervisors employed by the Employer at its 933 Elmwood Avenue, Buffalo, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

(b) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit (Transit & French Unit) concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its store located 4770

Transit Road, Depew, New York 14043, excluding Office clerical employees, guards, professional employees and supervisors as defined in the Act.

(c) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit (Camp Road Unit) concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its 5120 Camp Road, Hamburg, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

(d) Absent a bargaining order for the Camp Road store, reimburse the Union's organizational costs that it may incur in any possible rerun election at the Camp Road store.

(e) On request, rescind all terms and conditions of employment which it unlawfully implemented or unlawfully eliminated on or after August 23, 2021, but nothing in this Order is to be construed as requiring the Respondent to rescind any unilateral changes that benefited the unit employees without a request from the Union.

(f) At the Union's request, restore to Unit employees the terms and conditions of employment that were applicable prior to August 23, 2021, and continue them if effect until the parties either reach an agreement or a good-faith impasse in bargaining.

(g) Make whole the unit employees for any losses suffered by reason of the unlawful unilateral changes in terms and conditions of employment, on and after August 23, 2021, plus interest.

(h) Reinstate Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin "Minwoo" Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski to their positions, or if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of wages and benefits they may have suffered as a result of their unlawful termination and, in the event a discharged discriminatee is unable to return to work, instate a qualified applicant of the Union's choice.

(i) Make employees Kaitlyn Baganski, Mikaela Jazlyn Brisack, Colin Cochran, Rachel Cohen, Róisín Doherty, Danka Dragic, Michelle Eisen, Cassie Fleischer, Iliana Gomez, Cory Johnson, Angel Krempa, Caroline Lerczak, Kellen Higgins, Ryan Mox, Brian Murray, Nicole Norton, Brian Nuzzo, Erin O'Hare, Edwin "Minwoo" Park, Gianna Reeve, Elissa Pfleuger, Joshua Pike, Alexis Rizzo-Kruckow, Daniel Rojas Jr., James Skretta, Nathan Tarnowski, and William Westlake whole, including but not limited to, by reimbursement for consequential harm they incurred as a result of Respondent's unlawful conduct.

(j) Reimburse the discriminatees for reasonable consequential damages incurred by them as a result of the Respondent's unlawful conduct.

(k) Remove from all files any reference to the discharge of Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski and notify them in writing that this has been done and that it will not be relied on for any future purpose.

(l) Rescind the verbal warnings issued to Danka Dragic, Angel Krempa, Brian Murray, Nicole Norton, Gianna Reeve, Alexis Rizzo-Kruckow, and James Skretta.

(m) Remove from all files any reference to the verbal warnings issued to Danka Dragic, Angel Krempa, Brian Murray, Nicole Norton, Gianna Reeve, Alexis Rizzo-Kruckow, and James Skretta and notify them in writing that this has been done and that it will not be relied on for any future purpose.

(n) Rescind the written warnings issued to Róisín Doherty, Brian Murray, Nicole Norton, and Brian Nuzzo.

(o) Remove from all files any reference to the written warnings issued to Róisín Doherty, Brian Murray, Nicole Norton, and Brian Nuzzo, and notify them in writing that this has been done and that it will not be relied on for any future purpose.

(p) Rescind the final written warnings issued to Róisín Doherty, Angel Krempa, Edwin Park, and James Skretta.

(q) Remove from all files any reference to the final written warnings issued to Róisín Doherty, Angel Krempa, Edwin Park, and James Skretta and notify them in writing that this has been done and that it will not be relied on for any future purpose.

(r) Remove from all files any reference to the investigation of Gianna Reeve and notify her in writing that this has been done and that it will not be relied on for any future purpose.

(s) Remove from all files any reference to the sending home early of Brian Murray and William Westlake and notify them in writing that this has been done and that it will not be relied on for any future purpose.

(t) Remove from all files any reference to the reduction in hours of Danka Dragic, Angel Krempa, Caroline Lerczak, Ryan Mox, Elissa Pfleuger, Joshua Pike, and William Westlake and notify them in writing that has been done and that it will not be relied on for any future purpose.

(u) Remove from all files any reference to the refusal to permit Colin Cochran and William Westlake to train new employees and notify them in writing that this has been done and that it will not be relied on for any future purpose.

(v) Rescind the denial or delay in approval of the transfer requests of Kaitlyn Baganski, Cory Johnson, and Erin O'Hare.

(w) Remove from all files any reference to the denial or delay in approval of the transfer requests of Kaitlyn Baganski, Cory Johnson, and Erin O'Hare and notify them in writing that this has been done and that it will not be relied on for any future purpose.

(x) Compensate Kaitlyn Baganski, Mikaela Jazlyn Brisack, Colin Cochran, Rachel Cohen, Róisín Doherty, Danka Dragic, Michelle Eisen, Cassie Fleischer, Iliana Gomez, Cory Johnson, Angel Krempa, Caroline Lerczak, Kellen Higgins, Ryan Mox, Brian Murray, Nicole Norton, Brian Nuzzo, Erin O'Hare, Edwin "Minwoo" Park, Gianna Reeve, Elissa Pfleuger, Joshua Pike, Alexis Rizzo-Kruckow, Daniel Rojas Jr., James Skretta, Nathan Tarnowski, and William Westlake for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 3, within 21

days of the date the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a report allocating the backpay award to the appropriate calendar year(s) and a copy of the backpay recipient's corresponding W-2 form reflecting the backpay award.

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

(z) Require the Respondent to provide the Union with employee contact information, equal time to address employees if they are convened by Respondent for pre-election meetings about union representation, and reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted.

(aa) Provide ongoing training of employees, including supervisors and managers, both current and new, on employees' rights under the Act and compliance with the Board's Orders with an outline of the training submitted to the Agency in advance of what will be presented and that the Federal Mediation and Conciliation Service (FMCS) conduct such training.

(bb) Physically post the Notice to Employees at all of Respondent's facilities in the United States and its Territories and require the Notice to be posted for the length of the organizing campaign and distribute the Notice to Employees and the Board's Orders to current and new supervisors and manager. Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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, the 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 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed a 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 since August 23, 2021.

(cc) Electronically distribute the Notice to Employees to all employees employed by Respondent in the United States and its Territories by text messaging, posting on social media websites, and posting on internal apps and intranet websites, if Respondent communicates with its employees by such means.

(dd) Grant a Board Agent access to Respondent's facilities and to produce records so that the Board Agent can determine whether Respondent has complied with posting, distribution, and mailing requirements.

(ee) At a meeting or meetings scheduled to ensure the widest possible attendance, have Howard Schultz Denise Nelson read the Notice to Employees and an Explanation of Rights to employees employed by Respondent at Respondent's Buffalo-area facilities on work time in the presence of a Board agent, a representative of the Union, or have a Board agent read the Notice to Employees and an Explanation of Rights to employees employed by Respondent at Respondent's facility on work time in the presence of a representative of the Union, Howard Schultz, and Denise Nelson, and make a video recording of the reading of the Notice to Employees and the Explanation of Rights, with the recording being distributed to employees by electronic means or by mail.

(ff) Restore the operation of the Walden Galleria Kiosk as it existed prior to September 2021 and make former kiosk employees whole, including, but not limited to, by reimbursement for consequential harm they incurred as a result of Respondent's unlawful conduct.

(gg) Make employees of Respondent's Buffalo facilities whole for all temporary closures, including but not limited to, by reimbursement for consequential harm they incurred as a result of Respondent's unlawful conduct.

(hh) Make employees of Respondent's Buffalo facilities whole for Respondent's decision to centralize training, including but not limited to, by reimbursement for consequential harm they incurred as a result of Respondent's unlawful conduct.

(ii) Within 21 days after service by the Region, file with the Regional Director for Region 3 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. March 1, 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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT solicit complaints and grievances from employees in response to union activity.

WE WILL NOT promise employees increased benefits and improved terms and conditions of employment in response to union activity.

WE WILL NOT promise to renovate stores in response to union activity.

WE WILL NOT promise to convert stores to drive-through-only locations in response to union activity.

WE WILL NOT inform employees that their wage increases are a response to organizing efforts.

WE WILL NOT announce seniority-based wage increases in response to union activity.

WE WILL NOT grant seniority-based wage increases in response to union activity.

WE WILL NOT promise to improve store conditions, including upgrading and replacing equipment, in response to union activity.

WE WILL NOT engage in surveillance of employees who are participating in union activity.

WE WILL NOT photograph employees engaged in union activity.

WE WILL NOT station additional managers at stores in order to more closely supervise, monitor, or create the impression that employees' union activities are under surveillance.

WE WILL NOT schedule managers to work during all operational hours at stores to more closely supervisor, monitor, or create the impression that employees' union activities are under surveillance.

WE WILL NOT have high-ranking company officials make repeated and unprecedented visits to stores in order to more closely supervise, monitor, or create the impression that employees' union activities are under surveillance.

WE WILL NOT prohibit employees from discussing their wages with one another.

WE WILL NOT remove the ability of Store Managers to hire employees in response to union activity.

WE WILL NOT transfer Store Managers' hiring abilities to dedicated recruiters in response to union activity.

WE WILL NOT monitor employees' conversations on company headsets in response to union activity.

WE WILL NOT temporarily transfer employees to stores with upcoming union votes in an attempt to pack the voting unit.

WE WILL NOT hire additional employees in stores with upcoming union votes in an effort to dilute support for the Union.

WE WILL NOT overstaff stores with upcoming union votes in an effort to dilute support for the Union.

WE WILL NOT interrogate employees about their union activities.

WE WILL NOT interrogate employees about their protected concerted activities.

WE WILL NOT restrict employees from posting union literature at stores where the posting of other types of literature is permitted.

WE WILL NOT hire additional employees in an attempt to remedy grievances we unlawfully solicited.

WE WILL NOT centralize the training of new hires in an attempt to remedy grievances we unlawfully solicited.

WE WILL NOT make facilities improvements at our stores in an attempt to remedy grievances we unlawfully solicited.

WE WILL NOT begin permitting shift supervisors to disable mobile ordering, close store cafés, and close stores in an attempt to remedy grievances we unlawfully solicited.

WE WILL NOT disable mobile ordering in an attempt to remedy grievances we unlawfully solicited.

WE WILL NOT authorize additional hours of labor or offer additional hours to employees in an attempt to remedy grievances we unlawfully solicited.

WE WILL NOT arrange for additional training in an attempt to remedy grievances we unlawfully solicited.

WE WILL NOT increase the frequency with which we post schedules in an attempt to remedy grievances we unlawfully solicited.

WE WILL NOT change our training procedure for new hires.

WE WILL NOT threaten employees with the loss of the ability for managers to work on the floor of their stores in response to union activity.

WE WILL NOT threaten employees with the loss of a direct relationship with management in response to union activity.

WE WILL NOT threaten that employees would not be able to pick up shifts at other stores in response to union activity.

WE WILL NOT tell employees that we will not offer additional benefits in contract negotiations with the Union in response to union activity.

WE WILL NOT threaten employees with the withholding of new benefits if they elected the Union as their bargaining representative.

WE WILL NOT threaten employees with the loss of the ability to react quickly in emergency situations if they elected the Union as their bargaining representative.

WE WILL NOT threaten employees with discipline or reprisal for engaging in protected concerted activity.

WE WILL NOT instruct employees to engage in surveillance of other employees' union activities.

WE WILL NOT instruct employees to report other employees' union activities to us.

WE WILL NOT threaten to implement a new minimum availability requirement in response to union activity.

WE WILL NOT prohibit employees from discussing the Union with off-duty employees while permitting conversations with off-duty employees about other non-work subjects.

WE WILL NOT prohibit employees from discussing the Union with customers while permitting conversations with customers about other non-work subjects.

WE WILL NOT threaten employees that they will not receive raises if they selected the Union as their bargaining representative.

WE WILL NOT threaten employees with reprisal for engaging in union activity.

WE WILL NOT more strictly enforce our Dress Code & Personal Appearance policy in response to union activity.

WE WILL NOT enforce our Dress Code & Personal Appearance policy more stringently against union supporters.

WE WILL NOT more strictly enforce our Attendance & Punctuality policy in response to union activity.

WE WILL NOT enforce our Attendance & Punctuality pol-

icy more stringently against union supporters.

WE WILL NOT more strictly enforce our Soliciting/Distributing Notices policy in response to union activity.

WE WILL NOT more disparately enforce our Free Food Item and Beverages While Working policy against union supporters.

WE WILL NOT more strictly enforce our COVID Log policy against union supporters.

WE WILL NOT more strictly enforce our Partners Not Working While Ill policy against union supporters.

WE WILL NOT more strictly enforce policies regarding the making of drinks in response to union activity.

WE WILL NOT reduce the operational hours of our stores in response to union activity.

WE WILL NOT temporarily close our stores in response to union activity.

WE WILL NOT extend the closure of our stores indefinitely in response to union activity.

WE WILL NOT permanently close our stores in response to union activity.

WE WILL NOT close our stores early to hold anti-union meetings in response to union activity.

WE WILL NOT eliminate a free food benefit for employees in response to union activity.

WE WILL NOT transfer responsibility for scheduling employees from Store Managers to support managers in response to union activity.

WE WILL NOT transfer responsibility for promoting employees from Store Managers to support managers in response to union activity.

WE WILL NOT require employees to obtain managerial approval before picking up shifts at other stores in response to union activity.

WE WILL NOT require employees to pay for parking at company-sponsored events in response to union activity.

WE WILL NOT reduce the hours of work of employees in response to union activity.

WE WILL NOT disconnect direct phone lines to our stores in response to union activity.

WE WILL NOT institute a requirement that employees stand in line to order food and drinks during their breaks in response to union activity.

WE WILL NOT institute a requirement that employees maintain minimum availability to retain employment in response to union activity.

WE WILL NOT prohibit employees from using a third-party chat platform to switch shifts in response to union activity.

WE WILL NOT refuse to permit shift supervisors to close the cafés of stores in response to union activity.

WE WILL NOT refuse to permit shift supervisors to disable mobile ordering in response to union activity.

WE WILL NOT promote employees in response to union activity.

WE WILL NOT refuse to consider employees for promotion in response to union activity.

WE WILL NOT discipline employees in response to union activity.

WE WILL NOT discipline employees because they gave testimony to the National Labor Relations Board.

WE WILL NOT fire employees in response to union activity.

WE WILL NOT refuse to assign employees to a home store in response to union activity.

WE WILL NOT reduce the shifts on which shift supervisors are assigned as "play callers" in response to union activity.

WE WILL NOT refuse to allow union supporters to train new employees.

WE WILL NOT randomize employees' shifts in response to their union activities.

WE WILL NOT refuse to consider employees' applications for promotion in response to union activity.

WE WILL NOT isolate prounion employees by refusing to permit them to attend paid antiunion meetings.

WE WILL NOT prohibit employees from reporting to work because of their union activity.

WE WILL NOT prohibit employees from picking up shifts at other stores because of their union activity.

WE WILL NOT investigate employees because of their union activity.

WE WILL NOT provide employees with diminished wage increases because of their union activity.

WE WILL NOT deny employees' leave requests because of their union activities.

WE WILL NOT deny employees' requests to leave work early to close a store early to handle an emergency in response to union activity.

WE WILL NOT ban employees from all our locations in response to their union activity.

WE WILL NOT refuse to transfer employees because they engaged in union activity.

WE WILL NOT delay employees' transfers because they engaged in union activity.

WE WILL NOT change your terms and conditions of employment by implementing a minimum employment policy or by using discretion to discharge employees in bargaining units represented by the Union without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin "Minwoo" Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. In the event that any of these employees are unable to return to work, WE WILL instate a qualified applicant of the Union's choice.

WE WILL make Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski whole for any loss of earnings and benefits resulting from their discharges, less any interim earnings, plus interest, and WE WILL also make Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin "Minwoo" Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL reimburse Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski for any consequential harm they incurred as a result of their unlawful discharges.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful discharges of Cassie Fleischer, Angel Krempa, Kellen Higgins, Edwin Park, Daniel Rojas Jr., Brian Nuzzo, and Nathan Tarnowski, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the verbal warnings of Danka Dragic, Angel Krempa, Brian Murray, Nicole Norton, Gianna Reeve, Alexis Rizzo-Kruckow, and James Skretta, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful verbal warnings will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the coachings of Angel Krempa, Edwin "Minwoo" Park, and Daniel Rojas Jr., and WE WILL E WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful verbal warnings will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the written warnings of Róisín Doherty, Brian Murray, Nicole Norton, Brian Nuzzo, and Alexis Rizzo-Kruckow, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful written warnings will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the final written warnings of Róisín Doherty, Angel Krempa, Edwin "Minwoo" Park, and James Skretta, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful final written warnings will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the investigation of Gianna Reeve and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful investigation we conducted will not be used against her in any way.

WE WILL make Danka Dragic, Angel Krempa, Caroline Lerczak, Brian Murray, Nathan Tarnowski, and William Westlake whole for any loss of earnings and benefits resulting from us sending them home prior to the end of their shifts, less any interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful sending home early of Danka Dragic, Angel Krempa, Caroline Lerczak, Brian Murray, Nathan Tarnowski, and William Westlake, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful sending home of these employees will not be used against them in any way.

WE WILL make whole Angel Krempa, Brian Murray, and William Westlake for any consequential harm they incurred as a result of us unlawfully sending them home early.

WE WILL make Danka Dragic, Caroline Lerczak, Angel Krempa, Ryan Mox, Elissa Pflueger, Joshua Pike, and William Westlake whole for any loss of earnings and benefits resulting from us reducing their work hours, less any interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful reduction of work hours of Danka Dragic, Angel Krempa, Caroline Lerczak, Ryan Mox, Elissa Pflueger, Joshua Pike, and William Westlake, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful reduction in work hours will not be used against them in any way.

WE WILL make whole Danka Dragic, Angel Krempa, Caroline Lerczak, Ryan Mox, Elissa Pflueger, Joshua Pike, and William Westlake for any consequential harm they incurred as a result of the unlawful reduction of their work hours.

WE WILL make Colin Cochran and William Westlake whole for any loss of earnings and benefits resulting from the unlawful refusal to permit them to train new employees, less any interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful refusal to permit Colin Cochran and William Westlake to train new employees, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful refusal to permit them to train new employees will not be used against them in any way.

WE WILL make whole Colin Cochran and William Westlake for any consequential harm they incurred as a result of the unlawful refusal to permit them to train new employees.

WE WILL make Kaitlyn Baganski, Cory Johnson, and Erin O'Hare whole for any loss of earnings and benefits resulting from the unlawful refusal to transfer or delay in approving the transfer of these employees, less any interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful refusal to transfer or delay in approving the transfer of Kaitlyn Baganski, Cory Johnson, and Erin O'Hare, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful refusal to transfer or delay in approving the transfer of these employees will not be used against them in any way.

WE WILL make whole Kaitlyn Baganski, Cory Johnson, and Erin O'Hare for any consequential harm they incurred as a result of the unlawful refusal to approve their transfer requests or the delayal in approving their transfer requests.

WE WILL make James Skretta and William Westlake whole for any loss of earnings and benefits resulting from the unlawful denial of their requests to pick up shifts at other stores, less any interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful denial of the requests of Rachel Cohen, James Skretta, and William Westlake to pick up shifts at other stores, and WE WILL, within 3 days thereafter, notify them in writing that this has been

done and that the unlawful denial of these employees' requests to pick up shifts at other stores will not be used against them in any way.

WE WILL make whole Rachel Cohen, James Skretta, and William Westlake whole for any consequential harm they incurred as a result of the unlawful denial of their requests to pick up shifts at other stores.

WE WILL make whole Colin Cochran for any loss of earnings and benefits resulting from the unlawful refusal to consider his application for promotion to a shift supervisor position.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful refusal to consider Colin Cochran's application for promotion to a shift supervisor position, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful refusal to consider his application for promotion will not be used against him in any way.

WE WILL make whole Colin Cochran whole for any consequential harm he incurred as a result of the unlawful refusal to consider his application for promotion.

WE WILL make whole Brian Murray for any loss of earnings and benefits resulting from the unlawful refusal to allow him to report to work.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful refusal to permit Brian Murray to report to work, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful refusal to permit him to report to work will not be used against him in any way.

WE WILL make whole Brian Murray for any consequential harm he incurred as a result of the unlawful refusal to allow him to report to work.

WE WILL rescind our banning of Brian Nuzzo from our stores.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful banning of Brian Nuzzo from our stores, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful ban of him from our stores will not be used against him in any way.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful granting of a diminished wage increase to Iliana Gomez, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful grant of a diminished wage increase will not be used against her in any way.

WE WILL make whole Mikaela Jazlyn Brisack for any loss of earnings and benefits resulting from the unlawful denial of her requests for time off.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful denial of Mikaela Jazlyn Brisack's requests for time off, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful denial of her requests for time off will not be used against her in any way.

WE WILL make whole Mikaela Jazlyn Brisack for any consequential harm she incurred as a result of the unlawful denial of her request for time off.

WE WILL make whole Mikaela Jazlyn Brisack for any loss of earnings and benefits resulting from the unlawful denial of her request to reduce her availability.

WE WILL make whole Michelle Eisen, Cassie Fleischer, Gianna Reeve, and William Westlake for any loss of earnings and benefits resulting from the unlawful refusal to permit them to attend paid meetings to discuss union representation.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful refusal to permit Michelle Eisen, Cassie Fleischer, Gianna Reeve, and William Westlake to attend paid meetings to discuss union representation, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful refusal to permit them to attend paid meetings to discuss union representation will not be used against them in any way.

WE WILL make whole, for any loss of earnings and benefits, any employees affected by the unlawful closure of stores for renovations at the following locations: 4770 Transit Road, Depew, New York; 5120 Camp Road, Hamburg, New York; 1703 Niagara Falls Boulevard, Buffalo, New York; 8100 Transit Road, Suite 100, Williamsville, New York, 3015 Niagara Falls Boulevard, Amherst, New York; 9660 Transit Road, Suite 101, East Amherst, New York; 4255 Genesee Street, Suite 100, Cheektowaga, New York; 6707 Transit Road #100, Buffalo, New York; 3186 Sheridan Drive, Amherst, New York; 933 Elmwood Avenue, Buffalo, New York; 5395-5495 Sheridan Drive, Amherst, New York; 3540 McKinley Parkway, Buffalo, New York; and 235 Delaware Avenue, Buffalo, New York.

WE WILL make whole any employees affected by the unlawful closure of stores for renovations at the following locations: 4770 Transit Road, Depew, New York; 5120 Camp Road, Hamburg, New York; 1703 Niagara Falls Boulevard, Buffalo, New York; 8100 Transit Road, Suite 100, Williamsville, New York, 3015 Niagara Falls Boulevard, Amherst, New York; 9660 Transit Road, Suite 101, East Amherst, New York; 4255 Genesee Street, Suite 100, Cheektowaga, New York; 6707 Transit Road #100, Buffalo, New York; 3186 Sheridan Drive, Amherst, New York; 933 Elmwood Avenue, Buffalo, New York; 5395-5495 Sheridan Drive, Amherst, New York; 3540 McKinley Parkway, Buffalo, New York; and 235 Delaware Avenue, Buffalo, New York for any consequential harm they incurred as a result of the unlawful closure of these stores for renovations.

WE WILL make whole, for any loss of earnings and benefits, any employees affected by the unlawful reduction of operating hours at our stores located at 1775 Walden Avenue, Cheektowaga, New York; 4255 Genesee Street, Suite 100, Cheektowaga, New York; 5120 Camp Road, Hamburg, New York; 4700 Transit Road, Depew, New York; 520 Lee Entrance, Amherst, New York; and 3015 Niagara Falls Boulevard, Amherst, New York, less any interim earnings, plus interest.

WE WILL make whole any employees affected by the unlawful reduction of operating hours at our stores located at 1775 Walden Avenue, Cheektowaga, New York; 4255 Genesee Street, Suite 100, Cheektowaga, New York; 5120 Camp

Road, Hamburg, New York; 4700 Transit Road, Depew, New York; 520 Lee Entrance, Amherst, New York; and 3015 Niagara Falls Boulevard, Amherst, New York for any consequential harm they incurred as a result of the unlawful reduction in operating hours at these stores.

WE WILL make whole, for any loss of earnings and benefits, any employees affected by the unlawful requirement that employees paid for parking at the November 6, 2021 event hosted by us, less interim earnings, plus interest.

WE WILL make whole, for any loss of earnings and benefits, any employees affected by the unlawful reduction of hours at the stores located at 933 Elmwood Avenue, Buffalo, New York; 4770 Transit Road, Depew, New York; and 3015 Niagara Falls Boulevard, Amherst, New York.

WE WILL make whole any employees affected by the unlawful reduction of hours at the stores located at 933 Elmwood Avenue, Buffalo, New York; 4770 Transit Road, Depew, New York; and 3015 Niagara Falls Boulevard, Amherst, New York for any consequential harm they incurred as a result of the unlawful reduction in hours at these stores.

WE WILL make whole, for any loss of earnings or benefits, any employees affected by the unlawful reduction in operational hours of the stores located at 1775 Walden Avenue, Cheektowaga, New York; 4255 Genesee Street, Suite 100, Cheektowaga, New York; 5120 Camp Road, Hamburg, New York; 4770 Transit Road, Depew, New York; 520 Lee Entrance, Buffalo, New York; and 3015 Niagara Falls Boulevard, Amherst, New York.

WE WILL make whole any employees affected by the unlawful reduction in operational hours of the stores located at 1775 Walden Avenue, Cheektowaga, New York; 4255 Genesee Street, Suite 100, Cheektowaga, New York; 5120 Camp Road, Hamburg, New York; 4770 Transit Road, Depew, New York; 520 Lee Entrance, Buffalo, New York; and 3015 Niagara Falls Boulevard, Amherst, New York for any consequential harm they incurred as a result of this unlawful reduction in operational hours.

WE WILL make whole, for any loss of earnings and benefits, any employees affected by the unlawful centralization of new employee training, less any interim earnings, plus interest.

WE WILL make whole any employees affected by the unlawful centralization of new employee training for any consequential harm they incurred as a result of this unlawful action.

WE WILL restore the operation of our store located at 1 Walden Galleria K-04 in Cheektowaga, New York as it existed prior to September 2021.

WE WILL make whole, for any loss of earnings or benefits, any employees affected by the unlawful closure of the store located at 1 Walden Galleria K-04 in Cheektowaga, New York.

WE WILL make whole any employees affected by the unlawful closure of the store located at 1 Walden Galleria K-04 in Cheektowaga, New York for any consequential harm they incurred as a result of the unlawful closure of this store.

WE WILL make whole, for any loss of earnings or benefits, any employees affected by the unlawful stricter and disparate enforcement of the following policies: Attendance & Punctuality, Soliciting/Distributing Notices, Free Food Item and Beverages While Working, COVID Log, and Partners Not Working While Ill.

WE WILL make whole any employees by the unlawful stricter and disparate enforcement of the following policies: Attendance & Punctuality, Soliciting/Distributing Notices, Free Food Item and Beverages While Working, COVID Log, and Partners Not Working While Ill for any consequential harm they incurred as a result of the unlawful enforcement of these policies.

WE WILL compensate Kaitlyn Baganski, Mikaela Jazlyn Brisack, Colin Cochran, Rachel Cohen, Róisín Doherty, Danka Dragic, Michelle Eisen, Cassie Fleischer, Iliana Gomez, Cory Johnson, Angel Krempa, Caroline Lerczak, Kellen Higgins, Ryan Mox, Brian Murray, Nicole Norton, Brian Nuzzo, Edwin "Minwoo" Park, Gianna Reeve, Elissa Pflueger, Joshua Pike, Alexis Rizzo- Kruckow, Daniel Rojas Jr., Erin O'Hare, James Skretta, Nathan Tarnowski, and William Westlake for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director of Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 3, 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, copies of Kaitlyn Baganski, Mikaela Jazlyn Brisack, Colin Cochran, Rachel Cohen, Róisín Doherty, Danka Dragic, Michelle Eisen, Cassie Fleischer, Iliana Gomez, Cory Johnson, Angel Krempa, Caroline Lerczak, Kellen Higgins, Ryan Mox, Brian Murray, Nicole Norton, Brian Nuzzo, Edwin "Minwoo" Park, Gianna Reeve, Elissa Pflueger, Joshua Pike, Alexis Rizzo-Kruckow, Daniel Rojas Jr., Erin O'Hare, James Skretta, Nathan Tarnowski, and William Westlake's corresponding W-2 forms reflecting the backpay award.

WE WILL provide the Union with employee contact information and equal time to address employees convened for captive audience meetings about union representation.

WE WILL provide the Union reasonable access to our bulletin boards and all places where notices to employees are customarily posted.

WE WILL provide ongoing training of employees, including supervisors and managers, both current and new, on employees' rights under the Act and compliance with the Board's Order, and WE WILL submit an outline of the training to the Board in advance of it being presented.

WE WILL rescind our unlawful minimum availability policy and restore the status quo ante with respect to availability requirements.

WE WILL rescind our unlawful discretionary terminations of Cassie Fleischer, Angel Krempa, Edwin Park and restore the status quo ante with respect to these employees' employment.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining units:

All full-time and part-time Baristas and Shift Supervisors employed by the Employer at its 933 Elmwood Avenue, Buffalo, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its store located at 4770 Transit Road, Depew, New York 14043, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its 5120 Camp Road, Hamburg, New York facility, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

STARBUCKS CORPORATION

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/03-CA-285671 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.