UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

STARBUCKS CORPORATION

and

Cases 01–CA–302321
01–CA–307585
01–CA–316470
01–CA–317642
01–CA–318109

WORKERS UNITED LABOR UNION INTERNATIONAL, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION

Charlotte Davis, Esq. and *Andyeliz Papaleo*, for the General Counsel.
Jacqueline Phipps Polito, Esq., *Morgan S. Dull, Esq.*, and *Kimberly J. Duplechain, Esq.*, for Respondent.

DECISION

STATEMENT OF THE CASE

KIMBERLY SORG-GRAVES, Administrative Law Judge. This case was tried in Hartford, Connecticut, on April 11, 2023, and January 22–24, 2024. In 2022 and 2023, Workers United Labor Union International, affiliated with Service Employees International Union (Union) filed charges, and subsequently filed amendments to each of the charges against Starbucks Corporation (Respondent or Starbucks), with Region 1 (Region) of the National Labor Relations Board (Board) alleging violations of the National Labor Relations Act (Act) by Respondent, Starbucks Corporation (Respondent or Starbucks). After issuing an earlier complaint in Case 01–CA–302321, the Region issued a consolidated complaint (Complaint 1) combining Case 01–CA–307585 with the lead case on March 28, 2023, to which Respondent filed a timely answer. The hearing on Complaint 1 opened on April 11, 2023, but was indefinitely adjourned to address subpoena issues. On December 22, 2023, the Region issued a second consolidated complaint (Complaint 2) in cases 01–CA–316470, 01–CA–317642, and 01–CA–318109 based on charges filed in April and May 2023 and later amended. Respondent filed a timely answer to Complaint 2. The Region issued an order consolidating Complaint 1 and Complaint 2 for hearing, which resumed on January 22, 2024. (GC Exhs. 1(q), 1(s), 1(bb), 1(dd).)[1] I granted General Counsel's oral amendment to Complaint 1, adding allegations that Respondent more strictly enforced its

[1] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "Jt. Exh." for joint exhibits, "GC Exh." for the General Counsel's exhibits, "GC Brief" for General Counsel's posthearing brief, "R. Exh." for Respondent's exhibits, and "R. Brief" for Respondent's posthearing brief. Specific citations to the transcript and exhibits are included where appropriate to aid review and are not necessarily exclusive or exhaustive. My findings and conclusions are not based solely on the record citations contained in this decision but rather are based upon my consideration of the entire record for this case.

time and attendance policy at its Vernon, Connecticut store and failed to give notice and the opportunity to bargain before unilaterally changing this mandatory subject of bargaining. (Tr. 62; GC Exh. 52.) Respondent denied these amendments.

The complaints assert that Respondent violated Section 8(a)(1) of the Act by: (1) soliciting grievances, (2) telling employees they could lose pay raises and benefits if they unionized, (3) disparately removing union materials from the community bulletin board, (4) disparately enforcing its third-place policy and its solicitation and distribution policy, (5) telling an employee that his eligibility to work was dependent upon him being available to work more frequently than other employees, and (6) threatening employees with the loss of transportation reimbursement benefits if they selected the Union.

The complaints also assert that Respondent disciplined and discharged an employee, reduced the work hours of another employee, failed to give notice and opportunity to bargain concerning changes in employees terms and conditions of employment, failed to bargain concerning an employee's discharge, and failed to provide information requested by the Union that was necessary for the Union to fulfill its bargaining duties in violation of Section 8(a)(1), (3), and (5) of the Act.

On the entire record, including my assessment of witness demeanor and the briefs filed by the Respondent[2] and the counsel for the Acting General Counsel (General Counsel), I make the following:

FINDINGS OF FACT

JURISDICTION

The Respondent, a corporation, with an office and place of business in Seattle,

[2] General Counsel filed a motion to strike the argument raised by Respondent for the first time in its posthearing brief that the NLRB's structure is unconstitutional because "Board members are removable only 'for neglect of duty or malfeasance.' 29 U.S.C. § 153." Respondent filed a response to the motion contending that this argument fell within the scope of affirmative defenses raised in its answers to the consolidated complaints. While Respondent's answers raised other issues concerning the constitutionality of the NLRB's structure and procedures, it raised no defense regarding the removal protections of the Board members, nor was that defense raised at hearing. Therefore, I grant General Counsel's motion to strike the portion of Respondent's brief raising this defense. See, *Pain Relief Centers, P.A.*, 371 NLRB No. 143, slip op. at 1 fn. 1 (2022), enforced by default judgment, No. 22-2157 (4th Cir. Oct. 24, 2023). Respondent raised in its answer and argued in its posthearing brief that my removal protections as an administrative law judge for the NLRB are unconstitutional. There is no controlling precedent supporting that position, and I am limited to making recommendations based on Board or Supreme Court precedent. Therefore, I find only that Respondent preserves this argument for later review. See *Western Cab Co.*, 365 NLRB 761, 761, citing *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984) ("We emphasize that it is a judge's duty to apply established Board precedent which the Supreme Court has not reversed. It is for the Board, not the judge, to determine whether precedent should be varied."). Similarly, I decline to find that Respondent's meetings with employees at which management officials discussed Starbucks positions on unionization, whether mandatory or not, were unlawful. Prior to the Board's November 13, 2024 decision in *Amazon.com Services LLC,* which is only enforceable prospectively, no precedent established that it was unlawful for employers to compel employee attendance at meetings where the employer expressed its opinions on unionization. 373 NLRB No. 136 (2024). Furthermore, this decision does not address Respondent's various affirmative defenses raised in its answers that were not raised in its posthearing brief.

Washington and various locations throughout the United States, including its locations at 135 Talcottville Road, Vernon, Connecticut (the Vernon store) and at 6 North Main Street, Branford, Connecticut (the Branford store), has been engaged in the retail operation of stores offering coffee and quick-service food. Annually, the Respondent, in conducting its business operations, derives gross revenues in excess of $500,000, and purchases and receives at its Vernon and Branford stores products, goods, and materials valued in excess of $5000 directly from points outside the State of Connecticut. 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. (GC Exhs. 1(q), 1(s), 1(bb), 1(dd).)

Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction over this case.

CREDIBILITY

My findings and legal conclusions rely in part on credibility determinations made regarding witnesses and their testimony about the alleged unfair labor practices. My credibility analysis relies upon a variety of factors, including, but not limited to, the witness's demeanor, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the entire record. See *Double D Construction Group*, 339 NLRB 303, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination; therefore, I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

Predominately, I found that the witnesses testified in a straightforward and credible manner that was consistent with documentary evidence and the testimony of other witnesses. Respondent contends that Barista Nogosek's[3] testimony is unreliable because Nogosek was unable to recall that the door to the safe was left open when closing the store one night. The failure to close the safe was caught on the store's surveillance camera. Even after seeing the surveillance footage, Nogosek testified to not recalling leaving it open. Respondent contends that this lack of recognition and/or lack of candor makes Nogosek's testimony unreliable. (R. Br. 14.) I find that Nogosek was in the process of doing several closing tasks and simply did not realize that the safe was left open, and therefore, was unable to recall leaving the safe open either shortly after the incident or months later at the hearing. There is no evidence that Nogosek had left the safe open on other occasions, or that Respondent informed Nogosek that it had video evidence of the incident showing the safe was left open. Under the circumstances and considering Nogosek's demeanor in testifying, I come to the opposite conclusion from Respondent's assertion and find that the testimony was credible.

In the other instances where I find pertinent conflicting evidence, I note the testimony and evidence that I credited and why as the issues are addressed below.

[3] Except where necessary, I do not use individual's full names to respect their privacy.

THE FACTS

Background

Respondent operates thousands of retail coffee shops throughout the United States in addition to the Vernon and Branford, Connecticut stores where the conduct at issue in the complaint allegedly occurred. At the time of the allegations in the complaints, Starbucks Regional Manager oversaw District Manager Cullari, who oversaw the store managers which changed from Manager Valencia to Manager Castillo in January 2022, then to Store Manager Twible on about May 22, 2022. (Tr. 71.) Also, Manager Colburn, a store manager for another Starbucks store, occasionally filled in at the Vernon store. (Tr. 79, 156; GC Exh. 1(bb) and (dd).)

On about May 12, 2022, the employees at the Vernon store announced their intent to organize by sending a letter to that effect signed by several employees, including alleged discriminatees Nogosek and Hallenbeck to Starbucks' CEO Howard Shultz. (Tr. 83, 169, 170, 172, 226; GC Exhs. 13, 14.) On May 12, 2022, the Union petitioned for an election in Case 01–RC–295710 seeking to represent certain employees of the Vernon store. After the petition was filed, but before the election, Store Manager Castillo was replaced by Store Manager Twible. (Tr. 175, 226.) The Union prevailed in the July 14, 2022 election and the certification of representative issued on July 22, 2022.[4] (GC Exhs. 4–8.)

On February 21, 2023, the Union petitioned for an election in Case 01–RC–312535 seeking to represent certain employees of the Branford store. The Union lost the April 11, 2023, election. (GC Exhs. 9(a-c).)

Allegations of Coercive Conduct

Barista Nogosek worked at a California Starbucks starting in 2017 and then transferred to the Vernon store in October 2021.[5] (Tr. 69.) Nogosek had seen a district manager only 3 times and had never seen a regional manager prior to the May 22, 2022, filing of a certification petition by the Union for the Vernon store. (Tr. 76.) After the petition District Manager Cullari frequented the store and conducted one-on-one meetings with employees in the café seating area. (Tr. 77, 78.) Cullari asked Nogosek as the shift supervisor to pull 3 or 4 employees away from their work to speak with her. (Tr. 120.) Nogosek witnessed these interactions but could not hear what was discussed. Cullari had not conducted one-on-one employee meetings like that before the petition was filed. (Tr. 103.) The Regional Manager also started visiting the store frequently and would sit at a table in the café monitoring the activity in the store. (Tr. 78.)

Barista Hallenbeck recalls seeing Cullari at the store about once every week or 2 before the petition, and after the petition Cullari was at the store 3 to 5 times per week. (Tr. 176.)

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[4] The unit consists of all full-time and regular part-time baristas and shift supervisors employed by Starbucks Corp.at its 135 Talcottville Rd., Vernon, Connecticut 06066 facility (Store # 27448), but excluding store managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

[5] While the transcript states that Nogosek transferred to the Vernon Store in October 2022, either the transcription is inaccurate or Nogosek misspoke. Numerous references in the transcript and documentary evidence reveal that Nogosek was employed at the Vernon Store since at least April 2022.

Cullari usually sat at a table in the café area and monitored the store. (Tr. 177.)

After the petition was filed, Cullari met with Nogosek alone in the outdoor seating area at the beginning of Nogosek's shift. (Tr. 79.) Cullari, who was ill but willing to testify for Respondent when the hearing initially opened, unfortunately passed away before the hearing resumed. Therefore, exchanges between them are based only upon Nogosek's testimony concerning their interactions. Cullari asked Nogosek what "needed improvement in the store, and how [the store manager] could help make those improvements?" (Tr. 81.) Nogosek complained that the high attendance infractions at the store caused short staffing issues. Cullari said that management could address the attendance issue. Cullari continued, "[s]ee, we're having an open conversation here. But if we unionize, we probably would have limited access to that." (Tr. 81.) Nogosek responded that the employees did not have open communications with management and believed that having a union would allow the employees to make more progress. (Tr. 81.) Cullari responded that the store did not need a union and that a union would slow down communications and progress at the store. (Tr. 81, 82.)

When new store managers started at the store, they typically held meetings with the staff to introduce themselves and solicited any concerns of the employees. (Tr. 94, 95, 180, 226.) Both baristas Hallenbeck and Nogosek testified about attending such a meeting, Hallenbeck described the meeting as with multiple employees, Nogosek described the meeting as being with shift supervisors. This meeting or meetings occurred after Store Manager Twible started at the Vernon store shortly after the petition was filed. Twible told the employees that she was realigning the store with Starbucks' dress code. Twible highlighted that the dress code prohibited the wearing of leggings and told the shift supervisors to report dress code violations to her. (Tr. 95, 96, 180.)

At one such meeting, Nogosek again raised the effects of being short staffed due to tardiness and absences. Twible said that they could improve attendance by noting attendance issues in the daily playbook, a log used to record inventory and communicate between employees and managers. (Tr. 95.) Nogosek contends that tardiness was an everyday occurrence before it was raised in the meetings with Cullari and Twible. Nogosek seldom reported the tardiness of employees until after those meetings. (Tr. 97, 117.) Nogosek avoided using her sick time to cover a call-out from work because store managers had allowed her to use it as vacation time. (Tr. 101, 102.)

Twible also held one-on-one discussions with many employees during this period. (Tr. 82, 102.) These meetings were not barista development meetings, which were supposed to occur periodically. (Tr. 182.) Between the filing of the petition and the election, Twible engaged Barista Hallenbeck in a couple discussions. The first took place in the back room where Twible pointed to the posted NLRA employee rights notice. Twible brought up the pay increase and told Hallenbeck that because of the organizing drive she could not discuss benefits with him like she would be able to do if the union was not present, that they would start losing benefits, and that they would have to pay union dues. (Tr. 187.) Feeling uneasy about the conversation, Hallenbeck excused himself. (Tr. 187.)

On another occasion in the back room, Twible asked Hallenbeck if he used Starbucks' college tuition reimbursement benefit, and he acknowledged that he had. (Tr. 187.) Twible told him that if the Vernon store employees unionized that they would lose that benefit. (Tr. 187, 248.) Hallenbeck told her that was not the case and again ended the conversation quickly. (Tr. 187.) Hallenbeck also overheard Twible telling another barista that they would lose the tuition reimbursement benefit if they unionized. (Tr. 188, 189, 248.)

I credit Hallenbeck's and Nogosek's recollection of Twible's statements. Both of their testimonies concerning these meetings were direct and included details about location in the store and the presence of others during the conversations. Furthermore, Twible was still employed as a manager for Respondent at the time of the hearing but was not called to testify; therefore, Hallenbeck's and Nogosek's testimonies remain unrefuted.

Nogosek's Work and Union Activity

When starting with Starbucks in 2017, Barista Nogosek received and signed for a partner guide/employee handbook. (Tr. 116, 141; R. Exh. 1 and 3.) After transferring to the Vernon store, Nogosek was promoted to trainer and then to shift supervisor within 6 months. (Tr. 70, 71.) As a shift supervisor Nogosek worked alongside other baristas but had added duties of reminding partners to follow Starbucks' protocols, such as its dress code, and reporting when they did not. As the closing shift supervisor, Nogosek was responsible for store closing procedures including cleaning, pulling inventory for the next day, counting money in cash drawers and storing the money in the safe, and closing the store. (Tr. 72, 109, 110, 111, 113, 158.)

Wanting to support the unionization effort, Nogosek designed a unique union pin for the Vernon store. Nogosek communicated electronically with fellow employees to get their feedback on the design. (Tr. 85, 89, 90; GC Exh. 24, 25.) The pins were finished on the morning of June 16, 2022, and delivered to the Vernon store. (Tr. 91, 92.) Nogosek distributed the pins to employees at work and asked them to spread the word that the box of pins was on the microwave in the back office.[6] (Tr. 93, 123.) Pictures of the pin and comments identifying Nogosek as its designer were posted on the Starbucks Worker United X account for the Vernon store. (Tr. 411–413; GC Exh. 15.)

Nogosek, Hallenbeck, and most of the other employees wore the pins at work. (Tr. 93, 135, 192.) Store Manager Twible asked Hallenbeck if Nogosek designed the pin, which he affirmed. (Tr. 192.) Twible commented to Nogosek that employees were not wearing the pins to support the Union but to support Nogosek for designing the pin. (Tr. 94.)

[6] The backroom is also referred to the as the break room, office, or back office, which is not accessible to customers. (Tr. 144.)

The Press Conference

On about July 1, 2022, union officials held a press conference in a parking lot adjacent to the Vernon store. Community members and leaders joined Starbucks employees at the press conference at which captive audience speech meetings issues were discussed. (Tr. 368, 390; GC Exh. 16.) Many of the employees wore the union pins designed by Barista Nogosek, and people who attended the event went into the store to purchase drinks. (Tr. 285–287, 320, 321, 322, 368, 388.) Information about the event was posted on the social media platform X. (Tr. 390; GC Exh. 16.)

The Sip-in and Postings on the Community Bulletin Board

On about July 7, the Union invited supporters and community members to a "sip-in" at the Vernon store organized in part by union official Alverez. (Tr. 288, 323, 371, 392, 392, 414; GC Exh. 21.) Attendees at the "sip in" substituted well-known union leader's names for their names when ordering beverages. (Tr. 289, 323.) Between 15 and 25 people trinkled in and spent various amounts of time in attendance. (Tr. 402, 404.) They ordered beverages, then sat at tables talking in a conversational tone and writing union supportive messages, such as "union forever," on self-adhesive note papers to place on the community bulletin board in the café area. (Tr. 288–290, 304, 372, 393-394.) Starbucks allows community members to post notices about community events on the bulletin board. (Tr. 290, 399.) For example, at the Vernon store before those at the sip-in started posting their notes, a poster advertising an art and poetry event and another offering social services were on the bulletin board. (Tr. 292, 326; GC Exh. 10.)

Both off-work employees, union organizers, and individuals from the community sat inside and outside, wrote notes, talked amongst themselves in conversational tones, and took photographs during the sip-in. (Tr. 293, 373, 374, 402; GC Exh. 17.) The participants, including union organizers, started posting notes on the bulletin board. (Tr. 380, 381, 397–398; GC Exh. 10 and 18.) Other customers came in and out. The store was not extremely busy. (Tr. 402–404.) Sometime between 12:30 and 1 p.m., while Union Official Alverez was posting the notes on the bulletin board, Store Manager Twible and District Manager Cullari started taking the notes down. Alverez video recorded them on her cell phone. (Tr. 294–302, 401, 403; GC Exhs. 11 and 12c.) The video starts with Cullari saying, "And you have the right to do this, just not here. This is against our standard. So, we're just—we are going to close the café and ask you to leave at this time." When asked for clarification Cullari stated, "[W]e're closing the cafe because we're not respectful of the third place." (GC Exh. 12.) Alverez was not familiar with the policy but did not ask Cullari what she meant when she stated it was against Starbucks' standard. (Tr. 328.)

Cullari and Twible asked everyone to leave, including customers who were not participating in the sip-in. The café area was closed but the drive thru remained open. (Tr. 304, 376.) At least one community participant was told that the café was closing because they were understaffed. (Tr. 408.) Some participants remained outside the store for some time and explained to customers that the café was closed. (Tr. 409.) The café area remained closed from about 12:30 until about 2:07 p.m. (Tr. 304, 377, 404, 410; GC Exhs. 19 and 20.)

In its position paper, Respondent contended that Twible and Cullari removed these notes because two partners had posted notes and reminded partners of the personal non-solicitation policy that applied in all Starbucks locations.[7] (Tr. 363; GC Exh. 60.) Twible was not called to dispute this information.

General Counsel submitted a 30 second advertisement video available on Starbucks' YouTube channel showing community members posting adhesive notes in support of a community member on a Starbucks store's community board. (Tr. 418–423: GC Exh. 54.) General Counsel does not contend that the video depicts actual events but argues that Starbucks holds its community boards out to the public in a way inconsistent with its argument that community members posting adhesive notes in support of the employees' union drive was a violation of its policy concerning posting on the bulletin boards.

The Starbuck's Store Operations Manual lists the following content guidelines for its community bulletin Boards:

> *Approved Content*
> -Starbucks content—Starbucks may provide details on community programs and initiatives with promotional sign age as indicated in the Siren's Eye or through specific Action Items.
> -Store-specific content—Details about community programs and initiatives, including photos from service projects; thank you letters from non-profit organizations with whom your store has partnered; awards and recognition from the community or details about upcoming community events can be communicated on the community board.
> -Neighborhood content—Information about not-for-profit neighborhood community programs and initiatives, such as notices for needed volunteers or announcements about community events (e.g., art fairs or book clubs) can be shared.
> *Unapproved Content*
> The Community Board may not be used to post the following:
> for rent or for sale notices, advertisements, business cards, personal ads, notices or announcements that are political or religious in nature, notices that disparage Starbucks, any material that could be deemed offensive, insulting or derogatory, regulatory signage such as hand-washing notices or "no smoking" signs.
> (R. Exh. 6.)

[7] At hearing, Respondent counsel objected to the admission of the position statement and presented no evidence that the statements made therein were in error. Admissions in position statements are weighed against the interest of the client-party. *McKenzie Engineering Co.*, 326 NLRB 473, 485 fn. 6 (1998); *Optica Lee Borinquen*, 307 NLRB 705 fn. 6 (1992); *Massillon Community Hospital*, 282 NLRB 675 fn. 5 (1987); *American Postal Workers Union*, 266 NLRB 317, 319 fn. 4 (1983). For example, a position letter attached to an unsuccessful motion to the Board to dismiss the complaint was considered and weighed in *United Technologies Corp.*, 310 NLRB 1126, 1127 fn. 1 (1993).

Changes to Enforcement of Time and Attendance after the Election

The election and tally of ballots occurred on July 14, and the Union was certified as the Vernon store employees' collective-bargaining representative on July 22, 2022. (GC Exhs. 7 and 8.)

The first written discipline for attendance infractions was drafted on July 14 and issued to a few days later. Between July 14, and August 15, 2022, Starbucks issued eight written discipline notices to employees at the Vernon store for tardies and unscheduled absences often predating the election.Another six attendance disciplines were issued by March 2, 2023. (GC Exhs. 40 and 41.) At least two of these written disciplines noted one or more infractions that predated July 14 by as much as 5 weeks. From January 1, 2022, through the date of the election, the period before the election for which records were provided, Starbucks did not issue written discipline notices for attendance violations at the Vernon store, despite ongoing attendance issues as Nogosek testified and as is noted in the daily records/playbook. (Tr. 97, 101–102; GC Exhs. 64(a), 65(d), and 67(a).)

Events Surrounding Nogosek's Discharge

As the closing shift supervisor Nogosek was required to count the cash and prepare the cash register drawers and bank deposit. The shift supervisors have individual codes to unlock the safe. (Tr. 108, 162.) Nogosek's practice after the store closed was to enter the code to open the safe, which has a 2-minute delay. (Tr. 109.) Then Nogosek took the money from the cash registers to the back room to count each drawer, return a set amount of cash to the drawer, and prepare the deposit slip for the earnings, and place the deposit slip and money in a deposit bag. (Tr. 159, 161.) The money drawers were placed in the safe and the deposit bag was dropped into the deposit slot of the safe, which has a separate code that can only be used at certain times of the day and takes 10 minutes to unlock. (Tr. 160.) Nogosek did not make bank deposits, and therefore, did not have access to that portion of the safe. This process and helping other employees complete closing procedures took Nogosek about 45 minutes. (Tr. 110, 139.)

On August 12, 2022, after going through the closing procedures and putting the money in the safe, Nogosek forgot to close and lock the safe. (Tr. 133.) Nogosek went to the back room and shortly after walked out with other employees, locking the store doors behind them. (Tr. 145–147.)

On August 13, 2022, the morning shift supervisor sent a picture to Twible of the open safe. Security camera video verifies that Nogosek left the safe open. (Tr. 145–147.) The only inquiry Twible made to Nogosek about the safe was on August 17 when Twible asked Nogosek if there had been "any problems closing the safe recently." Nogosek denied having problems but noted that it sometimes indicated that it was locked when it was not. (Tr. 76.)

I credit that Nogosek did not realize until watching the surveillance camera footage during the hearing that the safe was not closed and locked that evening. Nogosek's actions of

walking away from the safe and quickly thereafter leaving and locking the store presented as a person who overlooked a routine task, albeit an important one. Nogosek was not directly questioned by management about the incident and was not confronted with the discharge papers until 2 weeks later. (Tr. 127, 133.) I credit Nogosek's testimony of not recalling leaving the safe open, despite it being an important aspect of the closing job.

Starbuck's Safety and Security Manual, provides as follows:

> The safe should be kept closed and locked at all times. The safe must not be left open and unattended by the cash controller. No other partner may be asked to watch or guard an open safe. Locking the inner door of the safe, but leaving the outer door open, is considered leaving the safe open. (R. Exh. 8).

On August 16, 2022, Twible issued a documented coaching form to Nogosek for coming to work 28 minutes late. (GC Exh. 99.) Before this incident, Nogosek had never received discipline at the Vernon store for coming in late, despite being up to 10 minutes late to work as often as three times per week. (Tr. 99, 125.)

On August 26, 2022, Nogosek arrived to work early and was stopped at an outside table by the regional manager and Store Manager Renee, who was covering for Twible. Renee asked Nogosek to review the documents on the table. The top document was a discharge form for Nogosek. It states:

> On 8/12/2022, [Nogosek] was the closing shift supervisor and evidence substantiates that [Nogosek] left the safe open overnight. Cash Controllers are responsible for keeping store funds secure throughout shift, including securing store funds overnight. Due to this misconduct, [Nogosek] is separated from employment.

(Tr. 103, 104; GC Exh. 26.) Nogosek signed the document as directed and asked how to get additional information about what the document said. (Tr. 105.) Manager Renee referred Nogosek to District Manager Cullari. (Tr. 105.)

Nogosek asked to go into the store to get a drink. At first Manager Renee agreed but stopped Nogosek to ask for the store keys. After Nogosek gave her the keys, Renee blocked Nogosek's entrance to the store. Eventually Nogosek was allowed to enter the store, purchase a drink, and tell some coworkers what happened before leaving. (Tr. 106, 107.)

Barista Hallenbeck testified that on about December 28, Twible told Hallenbeck that the charge concerning Barista Nogosek's discharge "was laughable," "given all the evidence the company has against [Nogosek]." (Tr. 22.)

Starbucks did not give the Union notice and opportunity to bargain concerning the discharge of Nogosek. (Tr. 305.)

After being discharged, Nogosek went to the Vernon store as a customer and spoke to Store Manager Twible. Twible apologized and said if she had been present it would have gone down differently." (Tr. 1123.) Other than the one documented coaching for tardiness before and one after transferring to the Vernon Store, Nogosek had not receive any other discipline before being discharge. (Tr. 112, 115.) Nogosek never received an employee evaluation while working at the Vernon store but was the employee of the quarter shortly after starting there. (Tr. 113.)

Comparable discipline

Starbucks maintains the following provision concerning safety and security policy violations:

> Violation of Starbucks Safety and Security policies should be addressed through the corrective action process. Below are some examples of common incidents. Reminder, some incidents are so severe that a partner may be separated without previous warnings or documentation. Starbucks does not have progressive discipline but administers the appropriate level of corrective action based on the situation. The policy proceeds to list examples for which an employee will receive a documented coaching, written warning, final written warning, or separation. Under final written warning some of the examples listed are:
>
> Leaving the door or DT window unlocked overnight (store unsecured),
> Leaving a store key unsecured,
> Leaving store funds unsecured (i.e., deposit or change order),
> Losing a store key, and
> Accessing the safe during the first 30 or last 30 minutes of customer operations.
>
> (Tr. 366; GC Exh. 51.)

While the policy suggests that the recommended discipline for leaving the store or safe unlocked or funds otherwise unsecured is a final written warning, documentation indicates that less stringent discipline was given. For example, shortly after becoming a shift supervisor Barista Hallenbeck did not close the door to the safe well enough for the lock to engage and it remained unlocked overnight. (Tr. 163.) The shift manager who opened the safe the next morning told him that the safe was not locked that morning. (Tr. 165.) Later, the store manager at that time discussed the issue with him but took no further action. (Tr. 163, 223, 224.) After this occurred, he paid more attention and realized that the safe had to be pushed closed hard or it would not lock. (Tr. 163, 164.)

Also, Respondent's daily records book notes that the safe was left open overnight on June 4, 2022. (GC Exh. 69(b).) Similarly, there are six notes in the daily record book noting that the store's purchase credit card, used to purchase store supplies, was missing or was left unsecured. (GC Exh. 67(c) and (b); 68(a), (b), (d), and (e).) Finally, the records indicate that on March 2, 2022, the drive thru window was "not fully locked" the previous night and on March 6, 2022, the back door was left "propped open." (GC Exh. 66(a) and (b).) There is no corresponding discipline record establishing that anyone received any form of discipline for these incidents.

Hallenbeck's Reduction in Availability and Subsequent Scheduling Outcome

Hallenbeck took a medical leave shortly after the election and did not return to work until November. The store was busy with an increase in customers due to the holiday season. Several new baristas were hired shortly before Hallenbeck's return, and he worked 27 to 32 hours per week as there were only four shift supervisors at that time. (Tr. 193.)

Late in November, Hallenbeck told Twible that he wanted to reduce his availability for work to two days to pursue emergency medical technician courses. Twible encouraged him to improve his employment prospects and told him to change his availability on the company's scheduler app indicating that it would be acceptable. (Tr. 194, 195, 241.) Hallenbeck said that he wondered whether he could remain a shift supervisor if he reduced his availability to 2 days and that they would need to discuss that. (Tr. 194, 195.)

On December 1, 2022, Hallenbeck limited his availability to afternoon shifts on Wednesday and Sunday starting January 2, 2023. (Tr. 196, 202; GC Exhs. 22 and 61.) Changes to availability had to be requested and approved 2 weeks prior to the starting date. (Tr. 201.) Hallenbeck knew that Starbucks did not guarantee that employees will be scheduled for all the hours they are available. (Tr. 239.) Hallenbeck checked the app in early December and took a screen shot of the page indicating it had been approved. (Tr. 204; GC Exh. 22.)

On December 28, Twible approached Hallenbeck while he was working and told him that his availability needed to be changed to continue working. (Tr. 204.) After Twible left Hallenbeck texted her inquiring about the minimum number of shifts he could work and remain employed, but she did not respond. (Tr. 208.) At the end of the shift, he told the manager trainee that he left his store keys in the safe. On January 2, 2023, Twible sent a text stating that he could not remain employed as a shift supervisor or a barista with the limited hours. (Tr. 205, 208, 209; GC Exh. 23.) Hallenbeck texted back asking again how many hours of availability was required but Twible did not respond. (Tr. 209; GC Exh. 23.) Hallenbeck had arranged his schedule so he could work more, if necessary, but was attempting to clarify how many hours/shifts he was required to be available. (Tr. 261, 262.)

Hallenbeck was still on the schedule to work on January 4. He reported to work, retrieved his keys from the safe, worked as the key holder that day, said his goodbyes thinking it was his last day, and again left the keys in the safe at the end of his shift. (Tr. 206.) After working on January 4, Hallenbeck checked the scheduler app and took screen shots reflecting that he was not scheduled for additional shifts. (Tr. 252–256; GC Exh. 33.)

On January 9, 2023, Twible sent him the following email message:

> As you know, I had previously asked you to let myself/Sam know if you would be stepping back as a barista due to <u>your availability not being reflective of a Shift Supervisor</u>. You had asked me how many hours are required. If you would only work the minimum amount of hours (12 as an example) You would need to have 30 hours of availability and would not be guaranteed scheduling to that. If the availability doesn't

> meet the business needs, then it may result in separation. On page 15 of the Partner Guide it states that there is no assurance or guarantee that hourly partners will receive their preferred hours or shifts, the same schedule each week, a minimum or maximum number of hours, or that a request for schedule change will be approved. When a Partners availability changes, it is given to the Store Manager for consideration. At this point, Im (sic) still unclear of what you would like to do. Staying in the Shift role is not feasible, but a Barista position may be based on a new availability from you. If none of this is feasible, please put in writing (email) your resignation. I appreciate your time and await a response from you! (emphasis added) (Tr. 212, 242, 306; GC Exh. 32.)

Hallenbeck had already sought assistance from the Union. (Tr. 306.) He believed that Twible's request for him to be available for more hours was inconsistent with her earlier conversation with him. (Tr. 211.) Hallenbeck did not respond to Twible's email. (Tr. 213, 258, 260; GC Exh. 1(y).)

At some point between January 4 and January 26, 2023, Hallenbeck logged back into the app and saw that he was scheduled to work on February 4 or 5. (Tr. 270, 272.) On about January 26, he logged in again and found that he was no longer scheduled. (Tr. 270; GC Exh. 33.) Respondent counsel questioned Hallenbeck about whether he was aware that Twible tried to contact him during this period and spoke to his mother, which Hallenbeck denied knowing. (Tr. 236.)

On February 16, Hallenbeck received an email from Starbucks' human resources department informing him that they attempted to contact him and directed him to contact Twible to clarify his availability. (Tr. 236.) Again, Hallenbeck did not respond. (Tr. 237.) On February 22, he received a follow-up email notifying him of his discharge. Prior to this email, no one had specifically told him that he had been discharged. (Tr. 236.)

Request to Bargain and to Provide Information concerning Hallenbeck

Union official Alvarez was aware that Starbucks hires high school and college students and had heard that it required a certain amount of availability but did not know the specifics of those requirements. (Tr. 336.) Alvarez believed that Hallenbeck was demoted because he limited his availability and was told he could no longer be a shift supervisor. (Tr. 339.) On January 11, 2023, Alvarez sent District Manager Cullari and Store Manager Twible a letter demanding that Hallenbeck be restored to the shift supervisor position at his availability starting January 2, and to bargain and provide information about the issue. (Tr. 213; 234, 258, 307–311; GC Exh. 34(a) and (b).) The letter requests:

> 1. Copies of any policies (including store policies, District-wide policies, regional policies, or national policies) relating to (1) the number of hours of work required of shift supervisors; (2) the number of hours of availability required by shift supervisors; (3) the number of hours of work required of baristas; (4) the number of hours of availability required by baristas.
>
> 2. All documents indicating receipt by Mr. Hallenbeck and/or any other employee at the Vernon location of any and all such policies.

> These are continuing requests for information, and you are requested to supplement your response with new or updated information that may become available in the future.

Request to Bargain and to Provide Information Concerning Marrero

Starbucks discharged Barista Marrero and did not give the Union notice and opportunity to bargain concerning the decision to discharge. The Union started an investigation into the discharge and on April 26, 2023, it sent a letter demanding to bargain over the decision to discharge Marrero and the effects of the discharge. (Tr. 313, 340; GC Exh. 35.) The letter also requested:

> l. A full and complete copy of [Barista] Marrero's personnel file, including but not limited to, all records of prior disciplinary action.
> 2. A full and complete copy of all materials that Starbucks relied upon in reaching its decision to terminate [Barista] Marrero, including but not limited to, any records regarding the "How We Communicate," "Workplace Violence," "Mission and Values," "Ops Excellence," and "Barista Approach" policies.
> 3. All documents indicating receipt by [Barista] Marrero and/or any other employee at the Vernon location of any and all such policies in #2.
> 4. A list of any individuals with whom Starbucks spoke, interviewed, or consulted during the course of any investigation or action leading up to the decision to terminate [Barista] Marrero.
> 5. Copies of any and all disciplinary action taken against Partners by Starbucks at the Vernon location on the basis of "unprofessional behavior" from April 1, 2020, to the date of this letter.
> 6. Copies of any and disciplinary action taken against Partners by Starbucks at the Vernon location on the basis of "Mission and Values," "Barista Approach," and/or "Ops Excellence" policies from April 1, 2020, to the date of this email.
>
> These are continuing requests for information, and you are requested to supplement your response with new or updated information that may become available in the future.

On May 5, 2023, Starbucks responded that it was not obligated to bargain with the Union concerning disciplinary matters that occurred following certification but before an initial contract was reached, citing *800 River Road Operating Co., LLC*, 369 NLRB No. 109 (2020). Starbucks further stated that since it did not have a duty to bargain, it was declining to provide the requested information. (Tr. 314; GC Exh. 36.) The Union filed charges with the NLRB alleging that Respondent failed to provide the requested information and give notice and opportunity to bargain concerning Hallenbeck's removal from the shift supervisor position and Marrero's discharge. (Tr. 341.)

Branford Store Allegation

The employees petitioned for an election at the Brandford store on February 21, 2023, and the tally of ballots reflects that the employees voted against unionization on April 11, 2023.

(Tr. 460.) Around the end of March, Barista Lehr asked the Brandford Store Manager Conforti about whether employees at the Brandford store would be eligible for the Company's Lyft program. (Tr. 346, 459, 468.) Starbucks' Lyft ride-share transportation company program was an established program that reimbursed some of the expenses of employees at qualifying stores who used Lyft. The program was available to stores where safety, congestion, lack of public transportation, etc. resulted in commuting difficulties. Conforti replied that the benefit was being considered for their area but that the Branford store would not be eligible for the benefit because of the petition for election required that they maintain the status quo. (Tr. 346.)

Conforti testified that she told Lehr that "unfortunately, due to the petition at that time, we were in a status quo position and that we were not able to make any changes at that point in time." (Tr. 469.) Conforti clarified that the Branford store was not eligible to even apply for the established program because of the pending petition and that the store became eligible to apply again after the Union lost the election. (Tr. 473–474.)

LEGAL ANALYSIS

ALLEGATIONS OF VIOLATIONS OF SECTION 8(a)(1)

The Board has long held that statements violate Section 8(a)(1) of the Act if they have a reasonable tendency to coerce employees in the exercise of their Section 7 rights. Intent of the speaker is immaterial. *KSM Industries, Inc.*, 336 NLRB 133, 133 (2001) (citations omitted). The standard for determining whether a threat is unlawful is "whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction." *Double D. Construction Group, Inc.*, 339 NLRB 303, 303–304 (2003). The Board uses an objective standard in evaluating whether a reasonable employee would tend to feel coerced under all the circumstances. See, *Grapetree Shores, Inc.*, 356 NLRB 316, 319 (2010)*; Miller Electric Pump & Plumbing*, 334 NLRB 824 (2001); *Shen Lincoln-Mercury-Mitsubishi, Inc.*, 321 NLRB 586 (1996)*; Mediplex of Danbury*, 314 NLRB 470, 472 (1994); *Rossmore House*, 269 NLRB 1176, 1177 (1984).

Employer representatives can share their personal opinions or facts about union representation. *See Trinity Servs. Group v. NLRB*, 998 F.3d 978, 980 (D.C. Cir. 2021) ("absent threats or promises Section 8(c) unambiguously protects any views, argument, or opinion—even those that the [NLRB] finds misguided, flimsy, or daft."). In *Siren Retail Corp. d/b/a Starbucks*, 373 NLRB No. 135, slip op. at 1–2, 6–12 (2024), the Board recently overruled *Tri-Cast, Inc.*, 274 NLRB 377, 378 (1985), and held that statements concerning employees' loss of a direct relationship with management was unlawful. The holding in *Siren Retail Corp*. is to be applied prospectively only.

Allegation that Respondent unlawfully solicited grievances

General Counsel contends that District Manager Cullari solicited grievances and promised to resolve the grievances during the preelection period. Respondent contends that Cullari was continuing a practice its managers had of soliciting and remedying employee grievances. Respondent also contends that it was prejudiced by the absence of Cullari's testimony to this effect. Cullari was present and willing to testify on the first day of hearing, but

due to the continuance, she was unable to do so before she unfortunately succumbed to illness. The lack of Cullari's testimony likely complicated Respondent's defense that it had a past practice of soliciting grievances. Respondent counsel had the opportunity to solicit from Nogosek and Hollenbeck or other employees and managers from the Vernon store or other store managers that Cullari had a practice of soliciting grievances and promising to remedy them prior to the filing of the petition at the Vernon store. Respondent made no claim that it attempted to secure other individuals' testimony but was unable to do so.

The Board reaffirmed in *Amazon.com Services LLC* that

> solicitation of grievances during an organizing campaign, if accompanied by a promise, express or implied, to remedy those grievances, violates Section 8(a)(1). It is the promise to remedy the grievance rather than the solicitation that constitutes the violation. Id. However, solicitation of grievances in the midst of a union campaign creates a rebuttable presumption of an implied promise to remedy the grievances. Id. The employer may rebut this presumption by, for instance, establishing that it had a past practice of soliciting grievances "in a like manner" prior to the campaign, or by clearly establishing that the statements at issue were not promises. 373 NLRB No. 136, slip op. at 6 (2024) (internal citations omitted).

I credit Barista Nogosek's testimony that between the filing of the petition and the election Cullari solicited grievances from Nogosek to which Nogosek complained about being short staffed due to tardies and absenteeism, because records reflect more strict enforcement of the attendance policy eventually occurred. Contrary to Respondent's assertion that as part of its open-door policy its managers had a practice of soliciting and addressing employee concerns, the evidence reflects that only incoming store managers conducted meetings to meet the employees and solicited ways to improve store functioning. The record contains no evidence of Cullari or other district managers directly soliciting and addressing employees concerns as occurred after the petition was filed. I find that Cullari's question and response to Nogosek and Twible's subsequent actions in combination with the increased presence at the store of the district and regional manager after the petition was filed would lead a reasonable employee to believe that the Respondent was offering to resolve employee grievances in exchange for disaffection from supporting unionization.

Accordingly, I find that by Cullari's solicitation of grievances and her statement that she would speak to the store manager about addressing the grievance raised, Respondent violated Section 8(a)(1) of the Act.

Allegation of threat of lost pay raises and benefits

As discussed above, I credit Hallenbeck's unrefuted testimony regarding Twible's statements that the employees would lose a pay raise and benefits like the tuition reimbursement program if they unionized.[8] There was no indication from his testimony that Twible's statements

[8] General Counsel also alleged that "Cullari and Twible, at the Vernon Store, threatened employees with loss of access to and communication with management if they selected the Union as their bargaining representative." At the

were couched in an acceptable explanation of the give and take of bargaining. Statements telling employees that their union activities will prevent them "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 *Starbucks Corporation*, 374 NLRB No. 10, slip op. at 4 (2024).

Based upon the credited testimony, I find that Twible's statements about the loss of a pay increase and other benefits if the employees selected the Union as their bargaining representative could reasonably be construed as coercive to employees' exercise of Section 7 rights in violation of Section 8(a)(1) of the Act.

Allegation that Respondent threatened employees with losing access to a Lyft benefit at the Branford Store if they unionized

Starbucks contends that Store Manager Conforti's statements concerning the Lyft reimbursement benefit was a lawful explanation that an employer cannot confer a new benefit upon employees while an election petition is pending. Regardless of whether that is an accurate statement of precedent given the circumstances in this case, I find that Conforti's testimony was that she told the employees that they were ineligible to even apply for Starbucks existing Lyft reimbursement benefit, regardless of whether it would be granted at the Branford store, because the petition was pending. Her testimony corroborates employee witness testimony that she told employees that they were ineligible for the benefit, not because commuting issues to the Branford store did not meet the program's requirements, but because of the organizing efforts at the Branford store. I find that a reasonable employee would understand her statements as a threat of loss of benefits based upon the employees' protected union activity.

Accordingly, I find that Starbucks violated Section 8(a)(1) of the Act by telling employees that they were ineligible for the Lyft reimbursement benefit because of their protected union activity.

Allegation of unlawful removal of Union materials from the community board

The Board has held that "it is not unlawful for an employer *to reserve to itself the exclusive use* of its bulletin boards and to bar any postings by employees." *Mid-Mountain Foods, Inc*., 332 NLRB 229, 233 (2000), quoting *Sprint/United Management Co.*, 326 NLRB 397, 399 (1998) (emphasis added). However, employers may not discriminate against the use of its bulletin board for posting union information when it has ceded its community board space to the public to use for posting notices of a similar nature to the union content, i.e., book clubs, poetry readings, art fairs and volunteer requests. Id. and *Arden Post Acute Rehab*, 365 NLRB 1065, 1065 fn. 3 (2017), enfd. 755 Fed.Appx 12 (D.C. Cir. 2018). While Board precedent focuses on

time these alleged statements were made, they were lawful pursuant to *Tri-Cast, Inc*., 274 NLRB 377(1985). While the Board in *Siren Retail Corp. d/b/a Starbucks* overruled *Tri-Cast*, the Board applied the new standard prospectively only. 373 NLRB No. 135, slip op. at 1–2, 6–12 (2024). Accordingly, I find that Cullari's and Twible's statements about the loss of access to and communication with management if the employees unionized was not unlawful at the time those statements were made.

what employees or union representatives can post on employer bulletin boards, the rationale for prohibiting discrimination of union content posted by non-employee union representatives is applicable to the posting of union content by customers. See, *Starbucks Corporation*, 373 NLRB No. 44, slip op. at 1 (2024) (*Starbucks-Zeeb Road)* (without discussion the Board affirmed the administrative law judge's decision finding that Starbucks unlawfully discriminated by removing self-adhesive notes posted by community members in support of the union in another store).

The facts of the instant case are almost identical to those in the *Starbucks-Zeeb Road* case. At the Vernon store, community members posted flyers about other community events of interest. Managers allowed those postings to remain while removing those concerning the union activity. Therefore, I find that Starbucks discriminated against the posting of union materials while allowing the posting of other notices supporting community events similar in nature to the community's support of the union drive.

Accordingly, I find that on July 7, 2022, Starbucks violated Section 8(a)(1) of the Act when its managers discriminatorily removed union content from the community board in the Vernon store.

Allegation of selectively enforcing its solicitation and distribution policy by prohibiting union-related material on the community board

Starbucks stated in its March 24, 2023 position statement that Cullari and Twible informed employees that posting union related materials on the community bulletin board violated its solicitation and distribution policy. Respondent did not submit evidence establishing that the information in the position statement was incorrect. Accordingly, I find that Respondent admitted that Cullari and Twible told employees that posting union related materials on the community bulletin board violated its solicitation and distribution policy.

Starbucks contends that the messages posted during the sip-in were different than what is allowed under its policy which limits postings to "Starbucks' store specific content, community programs and initiatives, neighborhood content, and information about not-for-profit community programs and initiatives (like art fairs where community volunteers are needed)." (R. Br. at 22.) Starbucks fails to recognize that seeking volunteers to help at community events, seeking people to attend poetry readings or to access support are forms of solicitations.[9]

While Respondent allowed these forms of solicitations it prohibited community members, including off duty employees, from posting solicitations for support of the Union on the board. When employers allow solicitations and postings other than its own, it must not selectively and disparately prevent union postings where other nonbusiness postings are permitted. See, *Honeywell, Inc.*, 262 NLRB 1402 (1982), enfd. F.2d 405 (8th Cir. 1983); *Kroger Co.*, 311 NLRB 1187, 1199 (1993); *Fairfax Hospital*, 310 NLRB 299, 304 (1993); *Roll & Hold Warehouse & Distribution Corp.*, 325 NLRB 41, 51 (1997).

[9] There is no allegation that the policy is unlawful as written, only as applied.

Starbucks also contends that Cullari's and Twible's statements that the policy prohibits employees from posting union materials on the community bulletin board could not reasonably be interpreted as a coercive statement. To the contrary, I find that reasonable employees would be chilled from engaging in any activity that they were told by management was a violation of a company policy, because they would reasonably fear disciplined for violating company policies.

Accordingly, I find that Starbucks violated Section 8(a)(1) of the Act by Cullari's and Twibles statements to employees that community members, including off work employees, are not allowed to post notes soliciting support for unionization on the store's community bulletin board.

Allegation of selectively enforcement of its third-place policy and procedure addressing disruptive behaviors to deny the Union access to chill employees' protected activities

The record contains no evidence for why Cullari and Twible closed the Vernon store other than to stop the sip-in participants from posting the pro-union notes on the community bulletin board. The sip-in participants made purchases from the store and were not disruptive, nor did they impede other customers use of the café. Once the sip-in participants slowly left the outside seating area, the store was reopened.

Starbucks contends that shutting the store was not coercive or threatening conduct. To the contrary, I find that a reasonable employee would find employer actions that negatively affect its financial interests aimed at preventing protected activity conduct as coercive. If an employer is willing to harm its financial interests to prevent union activity, reasonable employees could believe that they employer would be willing to harm the employees' wages, hours, and working conditions to prevent organizing activity.

Accordingly, I find that Respondent's closing the store to prevent the posting of notes soliciting or showing support for the organization effort violated Section 8(a)(1) of the Act.

Allegation of impliedly threatening employees with discharge if they did not meet an availability to work threshold which was not applicable to other employees

Although General Counsel solicited testimony about Twible's statements to Hallenbeck concerning the allegation that she threatened him with discharge for not meeting availability requirements that were not required of other employees, General Counsel's brief does not address this issue. Hallenbeck's testimony shows that he understood that a minimum amount of availability may be required to remain a shift supervisor or employed. Hallenbeck conceded as much during his conversation with Twible about wanting to reduce his availability to pursue schooling. Indeed, Starbucks' partner guide states that employees are not guaranteed a set schedule or a particular number of hours each week, which is what Hallenbeck's listing of only two shifts per week appeared to be seeking.

I find that General Counsel failed to prove that Twible required a greater amount of availability from Hallenbeck than other employees. There is no evidence in the record about what other employees listed as their availability or that other employees were allowed to work a set schedule of two shifts per week. I find Twible's written communication to be an unartfully

worded attempt to communicate that she could not guarantee him a set schedule and that he would need to give her more available hours/shifts from which she could meet the business' needs and give him shifts to work.

Accordingly, I find insufficient evidence to support the allegation that Twible unlawfully threatened Hollenbeck with discharge if his availability to work did not meet an availability threshold not applied to other employees, and that allegation is dismissed.

ALLEGATIONS OF VIOLATIONS OF SECTIONS 8(A)(3) AND (1)

Applicable Law

The Board uses the *Wright Line*[10] analysis to determine whether an employer's adverse action was motivated by animus or hostility towards union and/or protected concerted activities. *Intertape Polymer*, 372 NLRB No. 133, slip op. at 6 (2023). First, General Counsel must establish a prima facie case, then it becomes Respondent's burden of persuasion to refute the prima facie case. To establish a prima facie case, General Counsel must demonstrate that the employee engaged in union and/or protected activity, that the employer knew of that activity, and the activity was a motivating factor in the employer's decision to take an adverse action. *Roemer Industries, Inc.*, 367 NLRB No. 133, slip op. at 14–15 (2019), enfd. 824 Fed.Appx. 396 (6th Cir. 2020). Motivation can be established by direct evidence or inferred from circumstantial evidence. Id., slip op. at 15.

Because direct evidence of unlawful motive is rare, General Counsel may rely upon circumstantial evidence to meet this burden. *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999). Circumstantial evidence frequently is used to establish knowledge and animus because an employer is unlikely to acknowledge improper motive in discipline and termination. *Intertape Polymer*, 372 NLRB No. 133, slip op. at 12–13 (smoking gun seldom present); *NLRB v. Health Care Logistics,* 784 F.2d 232, 236 (6th Cir. 1986), enfg. in part 273 NLRB 822 (1984). A showing of animus need not be specific towards an employee's union or protected concerted activities. *Roemer Industries*, 367 NLRB No. 133, slip op. at 15. Circumstantial evidence may include the timing of the action; shifting, false or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; changes in past practices; and disparate treatment. *Intertape Polyme*r, 372 NLRB No. 133, slip op. at 7 and fn. 27. Other factors influencing circumstantial evidence include inconsistencies between the stated reason(s) for discharge and other employer actions and the employer's deviation from past practices, and timing. *Mondelez Global*, LLC, 369 NLRB No. 46, slip op. at 24 (2020), enfd. 5 F.4th 759 (7th Cir. 2021); *Sheet Metal Workers v. NLRB*, 989 F.2d 515, 519 (D.C. Cir. 1993), citing *Machinists Local v. NLRB*, 362 U.S. 411, 416 (1960). Also see: *Dodger Theatricals Holdings, Inc.*, 347 NLRB 953, 966 (2006).

If General Counsel establishes a prima facie case, the burden of persuasion then shifts to the employer: The employer must demonstrate that it would have taken the action despite the protected conduct. *Intertape Polymer*, 372 NLRB No. 133, slip op. at 7. An employer does not

[10] 251 NLRB 1083 (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).

satisfy its burden by merely stating a legitimate reason for the action(s) taken but instead must persuade by a preponderance of credible evidence that it would have taken the same action in the absence of the protected conduct. Id.; *Curaleaf Arizona*, 372 NLRB No. 16, slip op. at 4–5 (2022), enfd. in part and remanded on other grounds, 26 F.4th 1002 (D.C. Cir. 2022); *Roemer*, supra, citing: *Manno Electric, Inc.*, 321 NLRB 278, 280 fn. 12 (1996); and, *T & J Trucking Co.*, 316 NLRB 771 (1995). If the employer fails to meet this burden, a violation will be found because a causal relationship exists between the protected activity and the employer's adverse action. *Polymer Corp.*, supra.

General Counsel also may present evidence that the employer's asserted reasons are pretextual. False reasons or reasons that the employer did not actually rely upon are considered pretextual. *Intertape Polymer*, supra, slip op. at 7 and 13. Findings of pretext mean that the employer's reasons either did not exist or were not in fact relied upon, which leaves in place an inference of the employer's wrongful motive. *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982).

Enforcement of the Attendance & Punctuality Policy

No evidence controverts witness testimony and documentary records reflecting that Starbucks did not issue written disciplines for attendance and tardiness issues for the 6-1/2 months before the election but issued eight attendance and tardiness writeups in the month after the election with a total of 14 within the 7-1/2 months after the election. General Counsel contends that the stricter enforcement, including the writeup issued to Barista Nogosek, was in retaliation for the employees' union activity. Starbucks posthearing brief does not separately address the allegation that the stricter enforcement of the attendance policy was in response to the employees' protected activity but denies that Nogosek's attendance discipline was in retaliation for protected activity. Starbucks contends that enforcement of the policy was in response to Nogosek's complaints about short staffing caused by attendance and tardy issues, and therefore, was for the benefit of the employees, not to retaliate against them.

The record establishes that Starbucks was aware of multiple employees at the Vernon store engaging in union activity, including the signing of the initial petition and Twible's knowledge of Nogosek's activity of making the pin supporting the Union, which many employees wore. Furthermore, the increase in higher managers presence at the Vernon store and the statements made by management discussed above establish Starbucks animus towards the employees' union activity. Therefore, the burden shifts to Respondent to establish that it would have taken the same action regardless of the employees' protected activity.

If, as Respondent contends, Nogosek's comments to Cullari and Twible occurred during meetings shortly after Twible became the store manager in May or early June, the record contains no explanation for why no action was taken until July 14, the date the Union won the election. At least 2 of the disciplines list attendance fractions that occurred weeks before July 14, but the employees were not disciplined for those infractions until after the election. Respondent failed to call Twible, who still worked as a store manager at another store and otherwise failed to present evidence as to why Twible delayed in addressing the employee complaint until after the election. Based on the timing of Respondent's change in its past practice, I find its asserted

reason for the change pretextual. Thus, any discipline, including the discipline issued to Nogosek, and any discharges pursuant to the stricter enforcement of the Attendance & Punctuality policy are unlawful. See *St John's Community Services of New Jersey*, 355 NLRB 414 (2010) (stricter enforcement and change of work rule resulted in unlawful termination).

Based thereon, I find that Respondent violated Section 8(a)(3) and (1) of the Act through stricter enforcement of its Attendance & Punctuality policy in retaliation for the employees' protected activity, including the written discipline issued to Barista Nogosek.

Discharge of Nogosek

As discussed above, I find that the written attendance discipline issued to employees. including Nogosek violated Section 8(a)(3) and (1) of the Act. General Counsel also alleges that the Starbucks unlawfully discharged Nogosek for leaving the safe open. As discussed above, the record establishes that Twible was aware of Nogosek supported the union effort by designing the pin that many employees wore and that Starbucks, including Twible, expressed animosity towards the employees' unionization efforts. Thus, I find that General Counsel established a prima facie case, and the burden shifted to Starbucks to establish that it would have made the same decision absent Nogosek's union activity.

Starbucks was aware that Nogosek failed to close and lock the safe before closing the store but never discussed the situation with Nogosek. While Nogosek's failure was a breach of policy that left Respondent's assets at risk, the store was locked, and Respondent suffered no loss. The store's playbook reflects several instances where employees failed to properly lockup the store, the store's purchase card, or the safe in the past. Starbucks presented no evidence that other employees were investigated or disciplined for these other failures to secure Starbucks' assets.

Starbucks relies on its discipline policy that allows for discipline up to discharge for failures to follow policy. While Nogosek's oversight of leaving the safe door open, may have been more obvious than the failure to secure the store's purchasing card or to lock the drive-thru window, safe, or back door, each of these actions left Starbucks' assets at risk. Starbucks does nothing to explain why Nogosek's breach of policy was treated substantially different than that of others.

Therefore, I find Starbucks' defense to be pretextual and find that its discharge of Nogosek violated Section 8(a)(3) and (1) of the Act.

The reduction of Hallenbeck's hours of work

While Hallenbeck was active in communicating with employees about the Union, the record does not establish that Twible or other Starbucks' managers were aware of his activity beyond possibly wearing a union button and signing the initial employee petition as did many of the employees. Hallenbeck testified that he avoided discussing union issues with Twible out of fear of retaliation and there is no evidence that he raised issues in front of management. As I discussed above, I find that Starbucks exhibited animosity towards unionization, but I find

insufficient evidence that Starbucks was aware of the extent of Hallenbeck's union activity. While circumstantial evidence can establish a violation in the absence of direct evidence, I find insufficient circumstantial evidence to sustain a finding in this situation.

After the election, Hallenbeck took a medical leave and returned to work without incident. Shortly thereafter, Hallenbeck notified Twible that he intended to cut back his work hours to attend school. Hallenbeck testified that he knew that his limited availability may affect his ability to remain in the shift supervisor position or to continue working. When Twible encouraged him to return to school, he took her statement as an agreement that she would work with his schedule, which she did to some extent.

Hallenbeck notified Twible that he was reducing his hours of availability to two shifts per week and records show that this reduction in availability was approved. While Hallenbeck was not scheduled to work every shift he was available, he was periodically scheduled and attended the first of these sporadic shifts but eventually discontinued reporting to work and was then notified of his discharge. As discussed above, I find Twible's communication was to clarify that company policy did not support giving him a set schedule each week and, if he was seeking more work hours, he would need to list more available hours from which she could assign him shifts. Besides conclusive statements, from which I cannot draw a reasonable conclusion, the record does not establish General Counsel's assertion that other employees were regularly guaranteed similarly limited shifts or that employees who worked two or less shifts per week occupied shift supervisor positions at the Vernon store.

Accordingly, I find insufficient evidence that Starbucks violated Section 8(a)(3) and (1) of the Act by removing Hallenbeck from the shift supervisor position or by cutting his work hours and recommend the allegation be dismissed.

ALLEGATIONS OF FAILURE TO BARGAIN

Legal Standards

Unless an employer has a valid defense excusing it from the obligation, an employer violates Section 8(a)(5)'s duty to bargain under the unilateral change theory when they make a material, substantial, and significant change to mandatory subjects of bargaining without bargaining with the Union. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962) ("Unilateral action by an employer without prior discussion with the union does amount to a refusal to negotiate about the affected conditions of employment under negotiation, and must of necessity obstruct bargaining . . ."); *C&S Industries*, 158 NLRB 454, 456–459 (1966); *Mead Corp*., 318 NLRB 201, 202 (1995); *Toledo Blade Co.*, 343 NLRB 385 (2004); *Flambeau Airmold Corp.*, 334 NLRB 165 (2001). Starbucks does not contend that it gave the union notice and opportunity to bargain and/or bargained to an initial contract or to a lawful impasse. Instead, it raises defenses to excuse its failure to bargain with the newly certified union before changing enforcement of the attendance policy at the Vernon store.

The Board reaffirmed its longstanding principle "that an employer may not defend a unilateral change in terms and condition of employment that would otherwise violate Section 8(a)(5) by citing a past practice of such changes *before* its employees were represented by a

union and thus before the employer had a statutory duty to bargain with the union." *Wendt Corp.*, 372 NLRB No. 135, slip op. at 1 (2023). See also, In Re *Mackie Automotive Systems*, 336 NLRB 347, 349 (2001); *Porta-King Building Systems*, 310 NLRB 539, 543 (1993), enfd. 14 F.3d 1258 (8th Cir. 1994); ((employer's past practices prior to the union certification do not relieve it obligation to bargain over changes in wages, hours, and other terms and conditions of employment); cf. *KDEN Broadcasting Co.*, 225 NLRB 25, (1976) (schedule and hour changes consistent with employer's past practice lawful).

Changes in Enforcement of the Attendance & Punctuality Policy

Starbucks admits that it did not give the Union notice or opportunity to bargain concerning any changes in enforcement of the Attendance & Punctuality policy and denies that it had a duty to do so. Instead, Starbucks argues that it enforced the policy because it is new store managers' practice to solicit issues from employees when they first meet with them. Starbucks contends that the changes in enforcement of the attendance policy made at the Vernon store were in response to complaints made to Twible when she first became the store's manager and to bring the enforcement in line with Starbucks long term attendance policy.

Regardless of the motivation for the change, the record is clear that the change to more strictly enforcing the attendance policy did not occur until after the election and it had not been applied as strictly for at least the 6 months prior to the election. As the Board held in *Wendt Corp.*, Starbucks was not privileged to return to a past practice that was not in place when the Union was elected.

The Board in *Wendt Corp.*, also found that "[l]egions of Board and court cases have applied the Supreme Court's instructions in *Katz* and rejected an employer's unilateral change defense during bargaining where the changes are not part of a longstanding practice, and second, where the changes are informed by a large measure of discretion, with the result being that it cannot be said that 'in effect,' the alleged changes 'were a mere continuation of the status quo.'" 372 NLRB No. 135, slip op. at 6 (2023), quoting *Katz*, supra at 746. "An employer's practices . . . which are regular and long-standing, rather than random or intermittent, become terms and conditions of unit employees' employment . . . A past practice must occur with such regularity and frequency that employees could reasonably expect the 'practice' to continue or reoccur on a regular and consistent basis." *Sunoco, Inc.*, 349 NLRB 240, 244 (2007) (citations omitted). See also, *Mackie Auto Systems*, 336 NLRB 347, 349 (2001) (employer obligated to refrain from making unilateral changes during bargaining for a first contract); *Porta-King Building Systems*, 310 NLRB 539, 543 (1993), enfd. 14 F.3d 1258 (8th Cir. 1994 ((employer's past practices prior to the union certification do not relieve it obligation to bargain over changes in wages, hours, and other terms and conditions of employment); cf. *KDEN Broadcasting Co.*, 225 NLRB 25, 35 (1976) (schedule and hour changes consistent with employer's past practice lawful).

Here, the record establishes that the practice at the Vernon store for at least the 6 months prior to the election was to overlook tardies and absences and to allow employees to not take leave time to cover certain absences.

Accordingly, I find that Starbucks changed the enforcement of its attendance policy, a mandatory subject of bargaining, with regards to the unit of employees at the Vernon store

without giving the Union notice and opportunity to bargain over the change or its effects, thereby violating Section 8(a)(5) and (1) of the Act.

Duty to Provide Information Requested by the Union

The NLRA's 8(a)(5) duty to bargain requires employers to provide information requested by the Union where the query is relevant to bargaining responsibilities. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 153 (1956); *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *Des Moines Cold Storage, Inc.*, 358 NLRB 488, 499 (2012). The Union bears the burden of showing relevance for requests not related to terms and conditions of employment of the bargaining unit, while requests related to the bargaining unit are presumptively relevant. See *E.I. du Pont de Nemours Co.*, 366 NLRB No. 178, slip op. at 4 (2018); *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *The Earthgrains Co.*, 349 NLRB 389 (2007); *Postal Service*, 363 NLRB 156, 158 (2015). A "liberal" bar for relevancy is imposed, similar to the threshold for civil discovery. See, e.g., *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967); *Alcan Rolled Products*, 358 NLRB 37, 40 (2012). The evaluation depends on whether the requested information bears upon issues in the relationship between the parties and is likely to be of use to the Union in carrying out bargaining responsibilities. See *E.I. Du Pont*, 366 NLRB No. 178, slip op. at 4 (2018).

Here, the requests for information concerning policies, the effects of Hallenbeck's reduction in availability for work, and Marrero's discharge were for presumptively relevant information about policies applied to and actions taken against unit employees.

Even if the Union's concerns about the situation are inaccurate and their information request off-base, that does not render the request irrelevant. See *Cannelton Industries*, 339 NLRB 996, 1005 (2003) ("Even rumors may be pursued, providing that there is at least some demonstration that the request for information is more than pure fantasy.") Even where a Union's query seeks nonexistent information, the employer must "timely disclose that requested information does not exist." *Endo Painting Service*, 360 NLRB 485, 486 (2014). As discussed above, I find that the information requested here is presumptively relevant and despite Respondent's objection to any position or action that the Union may take after receiving the requested information, Starbucks had a duty to provide the information to the newly certified Union to allow it to determine what action, if any, to take.

Furthermore, the Board has held that even where an employer "has no obligation to notify and bargain to impasse with the [u]nion before imposing discipline," it does have "an obligation to bargain with the [u]nion, upon request, concerning the discharges, discipline, or reinstatement of its employees." *NLRB v. Katz*, 369 U.S. 736, 1187 (1962); *Oberthur Technologies of America Corp.*, 368 NLRB No. 5, slip op. at 3 (2019). In this case, Starbucks had already imposed discipline on Marrero, but that does not eliminate the Union's right to seek information and bargain over his discharge after it occurred.

Accordingly, I find that Starbucks violated Section 8(a)(5) and (1) of the Act by failing to provide the information requested by the Union in its January 11 and April 26, 2023 letters requesting information concerning Hallenbeck and Marrero.

Duty to Bargain

As discussed above, the Union requested to bargain over the discharge of Barista Marrero after it learned that Marrero had been discharged. Starbucks contends that it did not have a duty to bargain with the Union over the decision to discharge prior to discharging Marrero pursuant to *800 River Road Operating Co., LLC d/b/a Care One at New Milford*, 369 NLRB No. 109 (2020). General Counsel asserts that because the request to bargain was made after Marrero was discharged that the holding in *Oberthur Technologies* requires an employer "to bargain with the [u]nion, upon request, concerning the discharges, discipline, or reinstatement of its employees."

Allegation 13 in Complaint 2 does not allege that Starbucks failed to give notice and opportunity to bargain concerning the decision to discharge Marrero prior to his discharge. Instead, it alleges that Starbucks failed to bargain with the Union after the Union's April 26, 2023, request to bargain over Marrero's April 19 discharge. Therefore, the holding in *800 River Road* is not applicable to the instant issue. As General Counsel asserts, I find that, pursuant to the holding in *Oberthur Technologies*, Starbucks had the duty to provide information and bargain with the Union after they discharged Marrero as the Union requested.

Although neither of the consolidated complaints allege that Starbucks had a duty to give notice and opportunity to bargain with the Union before Marrero's discharge, General Counsel alleges in Complaint 1 that Starbucks' failure to give the Union notice and opportunity to bargain before disciplining and discharging Barista Nogosek after the Union won the election is a violation of the Act. General Counsel's posthearing brief concedes that Starbucks was not obligated to bargain before implementing these disciplinary actions under current Board precedent but argues for the overturning of *800 River Road Operating Co., LLC d/b/a Care One at New Milford*, 369 NLRB No. 109 (2020). (GC Br. 50.) I am constrained by current Board precedent; therefore, to the extent it is appropriate based upon these proceedings, General Counsel can raise this issue with the Board.

Accordingly, I find that Starbucks violated Section 8(a)(5) and (1) of the Act by refusing and failing to bargain with the Union concerning its discharge of Barista Marrero in response to the Union's April 26, 2023, request to bargain.

Furthermore, I do not find that Starbucks violated Section 8(a)(5) and (1) of the Act by failing to give the Union notice and opportunity to bargain before disciplining and discharging Barista Nogosek and that allegation is dismissed.

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

(b) Threatening employees with the withholding of benefits if they select the Union as their bargaining representative.

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

(d) Telling employees that they were not eligible for reimbursement for ride share transportation expenses because they were seeking the Union as their bargaining representative.

(e) Temporarily closing stores' cafes to prevent the showing of Union and community support for its employees' unionization efforts.

(f) More strictly enforcing the Soliciting/Distributing Notices policy by telling its employees that posting notes in support of unionization on the community bulletin board is a violation of the policy.

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

(a) More strictly enforcing the Attendance & Punctuality policy at the Vernon store by issuing discipline where it had not before because of its employees' support for and activities on behalf of the Union.

(b) Discharging Barista Nogosek because of Nogosek's support for and activities on behalf of the Union.

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

(a) Failing and refusing to bargain collectively with the Workers United Labor Union International, affiliated with Service Employees International Union (Union), the designated exclusive collective-bargaining representative of Respondent's employees at the Vernon store in the following appropriate collective-bargaining unit:

> All full-time and regular part-time baristas and shift supervisors employed by Starbucks Corp.at its 135 Talcottville Rd., Vernon, Connecticut 06066 facility (Store # 27448), but excluding store managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Failing and refusing to provide the Union with requested information relevant to its bargaining duties.

(c) Making a material change in the enforcement of its Attendance & Punctuality policy at the Vernon store and applying those changes to the employees in a bargaining unit represented by the Union without first notifying the Union and giving it an opportunity to bargain.

(d) Failing and refusing to bargain concerning the discharge of unit employees upon request of the Union.

REMEDY

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

The Respondent, having discriminatorily discharged Barista Nogosek, and having discharged any other employee as a result of its stricter enforcement of the Attendance & Punctuality policy 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 all other unit employees, who were not discharged but were otherwise 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 accordance with the Board's decision in *Thryv Inc.*, 372 NLRB No. 22 (2022), Respondent shall also compensate affected employees for any other direct or foreseeable pecuniary harms incurred as a result of the unfair labor practices found herein. 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*. To the extent Respondent's backpay obligations result in adverse tax consequences for affected employees due to their receiving lump-sum payments, Respondent is ordered to compensate those employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 1, 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, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In accordance with the Board's decision in *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondent shall also be required to file with the Regional Director for Region 1 a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award.

In Complaint 2, the General Counsel requests that in addition to physical and electronic posting of the Notice to Employees that is typically awarded in Board orders that Respondent be required to "electronically distribute the Notice to Employees to all employees who are or have been employed by Respondent since July 1, 2022." (GC Exh. 1(bb).) General Counsel's request is not limited to all the employees that worked at the Vernon and Branford stores since July 1, 2022. The Board has declined to issue nationwide remedies where findings are based on facts localized to a particular site or sites. *Trader Joe's*, 373 NLRB No. 73, 1 fn. 2 (2024) (denying the General Counsel's request for nationwide notice-posting "because our findings of violations here rely only on events at the Houston store.") Accordingly, to the extent that General Counsel's request was for distribution to employees employed since July 1, 2022, at locations other than the Vernon and Branford stores, I deny the request.

General Counsel also requested that Respondent be required to have "Store Manager Twible read both the Notice to Employees and an Explanation of Rights to all employees employed by Respondent at the Vernon Store on work time in the presence of a Board agent and

a representative of the Union." I find that the reading of the Notice to Employees is a special remedy that is reserved for situations involving widespread violations at a location or within the same bargaining unit(s). While the violations found herein are significant, they do not rise to the level for which the Board has traditionally required a reading of the notice to employees. Accordingly, I deny the request.

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

ORDER

Starbucks Corporation, in multiple locations in Vernon and Branford, Connecticut, by its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting grievances from employees and promising to remedy them to discourage employees from selecting union representation.

(b) Threatening employees with the withholding of benefits if they select the Union as their bargaining representative.

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

(d) Telling employees that they were not eligible for reimbursement for ride share transportation expenses because they were seeking the Union as their bargaining representative.

(e) Temporarily closing stores' cafes to prevent the showing of Union and community support for its employees' unionization efforts.

(f) More strictly enforcing the Soliciting/Distributing Notices policy by telling its employees that posting notes in support of unionization on the community bulletin board is a violation of the policy.

(g) More strictly enforcing the Attendance & Punctuality policy by issuing discipline to employees, including Barista Nogosek, where it had not before, because its employees supported and engaged in activities on behalf of the Union.

(h) Discharging Barista Nogosek because of Nogosek's support for and activities on behalf of the Union.

(i) Failing and refusing to bargain collectively with the Workers United Labor Union International, affiliated with Service Employees International Union (Union), the designated exclusive collective-bargaining representative of Respondent's employees at the Vernon Store in the following appropriate collective-bargaining unit:

> All full-time and regular part-time baristas and shift supervisors employed by Starbucks Corp. at its 135 Talcottville Rd., Vernon, Connecticut 06066 facility (Store # 27448), but excluding store managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

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

(j) Failing and refusing to provide the Union with requested information relevant to its bargaining duties.

(k) Making a material change in the enforcement of the Attendance & Punctuality policy and enforcing those changes against employees in a bargaining unit represented by the Union without first notifying the Union and giving it an opportunity to bargain.

(l) Failing and refusing to bargain concerning the discharge of unit employees upon request of the Union.

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

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

(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.

> All full-time and regular part-time baristas and shift supervisors employed by Starbucks Corp. at its 135 Talcottville Rd., Vernon, Connecticut 06066 facility (Store # 27448), but excluding store managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) On request, restore to unit employees the terms and conditions of employment that were applicable prior to July 14, 2022, and continue them in effect until the parties either reach an agreement or a good-faith impasse in bargaining.

(c) Make whole the unit employees for any losses suffered by reasons of the unlawful unilateral change in the enforcement of the Attendance & Punctuality policy at the Vernon store on or after July 14, 2022, plus interest, and for any other direct or foreseeable pecuniary harms suffered as a result of that unlawful unilateral change, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, offer full reinstatement to employees, who were discharged pursuant to the unlawful unilateral change in the enforcement of the Attendance & Punctuality policy at the Vernon store 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.

(e) Within 14 days from the date of this Order, remove from all files any reference to the any discipline or discharge issued pursuant to the unlawful unilateral change in the enforcement of the Attendance & Punctuality policy at the Vernon store and within three days thereafter notify the employees in writing that this has been done and that those occurrences will not be used against them in any way.

(f) Make Aly Nogosek 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 being unlawfully discharged.

(g) Within 14 days from the date of this Order, offer Aly Nogosek full reinstatement to Nogosek's former job, or if that job no longer exists, to substantially equivalent positions, without prejudice to the seniority or any other rights and privileges previously enjoyed.

(h) Within 14 days from the date of this Order, remove from all files any reference to the

Aly Nogosek's discharge and within three days thereafter notify Nogosek in writing that this has been done and that those occurrences will not be used against Nogosek in any way.

(i) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating backpay awards to the appropriate calendar year(s) for each employee.

(j) File with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(k) 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.

(l) Within 14 days after service by the Region, post at stores located at 135 Talcottville Road, Vernon, Connecticut (the Vernon store) and at 6 North Main Street, Branford, Connecticut (the Branford store), the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by Starbucks Corporation's authorized representative, shall be posted by Starbucks Corporation and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 2022.

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

(m) During this 60-day posting period, Respondent shall permit a duly appointed Board agent to enter its facilities at reasonable times and in a manner not to unduly interfere with its operations, for the limited purpose of determining whether it is following the notice posting, distribution, and mailing requirements.

The complaint is dismissed insofar as it alleges violations of the Act that I have not specifically found.

Dated, Washington, D.C., February 27, 2025

Kimberly Sorg-Graves

Kimberly Sorg-Graves
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED AND MAILED 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 solicit grievances from employees and promise to remedy them in order to discourage employees from selecting union representation.

WE WILL NOT threaten employees with the withholding of benefits if they select the Workers United Labor Union International, Affiliated with Service Employees International Union (Union) as their bargaining representative.

WE WILL NOT threaten employees that they will not receive raises if they selected the Union as their bargaining representative.

WE WILL NOT tell employees that they are not eligible for reimbursement for ride share transportation expenses because they are seeking the Union as their bargaining representative.

WE WILL NOT temporarily close stores' cafes to prevent the showing of Union and community support for its employees' unionization efforts.

WE WILL NOT more strictly enforce the Soliciting/Distributing Notices policy by telling our employees' that posting notes in support of unionization on the community bulletin board is a violation of the policy.

WE WILL NOT more strictly enforce the Attendance & Punctuality policy because of our employees' support for and activities on behalf of the Union.

WE WILL NOT discipline or discharge our employees because of their 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 fail and refuse to provide the Union with requested information relevant to its bargaining duties.

WE WILL NOT fail and refuse to bargain concerning the discharge of employees represented by the Union upon request of the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of 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 Workers United Labor Union International, Affiliated with Service Employees International Union, the designated exclusive collective-bargaining representative of Respondent's employees at the Vernon Store in the following appropriate collective bargaining unit:

> All full-time and regular part-time baristas and shift supervisors employed by Starbucks Corp. at its 135 Talcottville Rd., Vernon, Connecticut 06066 facility (Store # 27448), but excluding store managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL, on request of the Union, restore to the Vernon store Unit employees the terms and conditions of employment that were applicable prior to July 1, 2022, and continue them in effect until we and the Union either reach an agreement or a good-faith impasse in bargaining.

WE WILL, within 14 days from the date of this Order, offer any employee discharged as a result of unlawful unilateral change in enforcement of the Attendance & Punctuality policy, full reinstatement to their former job, 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.

WE WILL make the affected employees whole for any loss of earnings and other benefits resulting from the unlawful unilateral change in enforcement of the Attendance & Punctuality policy, plus interest, and we will also make such employees whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful unilateral change, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful disciplines and discharges resulting from the unlawful unilateral change in enforcement of the Attendance & Punctuality policy and within three days thereafter notify the employees in writing that this has been done and that the discipline and discharges will not be used against them in any way.

WE WILL make Aly Nogosek whole for any loss of earnings and other benefits resulting from the unlawful discharge, plus interest, and we will also make Nogosek whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful discharge, plus interest.

WE WILL, within 14 days from the date of this Order, offer Aly Nogosek full reinstatement to Nogosek's former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to Nogosek's seniority or any other rights and privileges previously enjoyed.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Aly Nogosek and within three days thereafter notify Nogosek in

writing that this has been done and that the discharges will not be used against Nogosek in any way.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and we will file with the Regional Director for Region 1, 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 year(s) for each employee.

WE WILL file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

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 this Order.

STARBUCKS COMPANY
(Employer)

Dated:_____ By:_____

(Representative) (Title)

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

10 Causeway Street, 6th Floor, Boston MA 02222-1072
(617) 565-6700, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/01-CA-302321 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (857) 317-7816.