

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

WAFFLE HOUSE, INC.

and

Case 10-CA-321421

SERVICE EMPLOYEES INTERNATIONAL
UNION

Sally R. Cline, Esq.

for the General Counsel.

Matthew D. Crawford and Andrew L. Edge, Esqs (Martenson, Hasbrouck & Simon, LLP)
Atlanta, Georgia, for the Respondent.

George N. Davies, Esq. (Quinn, Connor, Weaver, Davies & Rouco, LLP) Birmingham, Alabama
for the Charging Party.

DECISION

Jurisdiction

Respondent is a national restaurant chain with headquarters in Norcross, Georgia. This case involves store # 1470 in Columbia, South Carolina.¹ In 2023, Respondent derived gross revenues in excess of \$500,000. It also purchased and received goods valued in excess of \$5,000 at its South Carolina stores directly from points outside of South Carolina. Respondent is an employer within the meaning of Section 2 of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

STATEMENT OF THE CASE²

Arthur J. Amchan, Administrative Law Judge. This case was tried in Columbia, South Carolina on February 11-12, 2025. The Charging Party Union filed the charge giving rise to this case on July 10, 2023. The General Counsel issued the complaint on September 30, 2024. The General Counsel and Respondent filed post-trial briefs, which I have read and considered.

¹ 7428 Garners Ferry Road, Columbia, South Carolina.

² I believe Tr. 78 line 19 should read McMillan instead of Harper. Tr. 121 line 1 should also read McMillan instead of Parker.

The General Counsel alleges that Respondent by unit (store) manager Tyrissa McMillan and District Manager Gregory Wilson cornered employees and interrogated them about their protected activities. The General Counsel also alleges that Respondent violated Section 8(a)(1) of the Act by threatening employees with unspecified reprisals, i.e., telling them that raising
 5 workplace concerns was against Respondent’s policies and that management took employees’ representation petition personally; telling employees that they should go through local management and the chain of command instead of engaging in concerted activities; and telling employees that they should take their concerns to corporate headquarters.

10 Additionally, the General Counsel alleges that Respondent violated the Act by threatening employees with a lawsuit and threatening to call the police and press criminal charges against employees.

The General Counsel alleges Respondent, by unit manager Tyrissa McMillan violated the
 15 Act on July 15 and 16, 2023 by interrogating an employee about her union activities and statements the employee made to the press and accusing the employee of slander.³ Finally, the General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act by disciplining employee Marshawna Parker via a written warning.

20 *Statement of Facts*

On July 1, 2023, just before a shift change at 2:00 p.m., 2 off-duty employees, accompanied by 15-20 non-employees, which included union representatives, entered Respondent’s store 1470 in Columbia, South Carolina. The group was chanting, some had their
 25 arms raised in some sort of protest gesture. The group gathered in the middle of the store. Employee Summer Schoolmeester-Cochran read an employee petition, signed by 4 employees, to unit (store) manager Tyrissa McMillan. McMillan turned her back on the group. Schoolmeester-Cochran handed the petition to a manager in training. Union representatives recorded this event on cellphones. The group stayed in the store, which was open for business
 30 and serving customers, for about 3 ½ minutes.

That afternoon at about 3:15 p.m., McMillan and District Manager Greg Wilson, who had arrived at the restaurant sometime between 2 and 3:15 p.m., directed Schoolmeester-Cochran and employee Jessica Gantt, to meet with them in the back of the restaurant. Schoolmeester-Cochran
 35 recorded the conversations with these managers on her cellphone, G.C. Exhs. 3a & b.

Wilson asked what the demonstration that day was about. He asked if any the employees’ concerns had been brought to him or McMillan. Schoolmeester-Cochran and McMillan discussed Schoolmeester-Cochran’s scheduling. Wilson asked why Schoolmeester-
 40 Cochran did not raise her concerns to him, as opposed to taking them to the Union.

Wilson asked Gantt why she signed the representation petition. He stated that at store 1470 Gantt was getting enough hours to pay her bills, which she complained about when working at store 309. Wilson suggested that if the employees were not satisfied with answers

³ The complaint, paragraphs 9 and 10 alleges that Respondent, by McMillan, interrogated employees. However, the alleged violative conversations only involved McMillan and Marshawna Parker.

from one level of management, they should go up the chain of command. Wilson and McMillan discussed Gantt's scheduling issues with her.

5 McMillan told Gantt and Schoolmeester-Cochran that the demonstration earlier that day violated Waffle House company policy. Wilson told them McMillan could have called the police. McMillan indicated that she took the demonstration personally. Wilson indicated that he would call the police if there was another demonstration like the one that occurred earlier that day.

10 On July 8, several off-duty employees again entered the store with a union representative. Employee Naomi Harris read a strike notice to store manager McMillan. Then several employees, including Schoolmeester-Cochran and Marshawna Parker, who was on duty at the time, began a 3-day strike. They were joined outside the restaurant by 20-40 other people. During the strike, police arrived and spoke to one of the picketers. The record does not reflect
15 why the police appeared or approached the pickets or what was said to any of them.

The issues raised by the strikers were understaffing, schedule changes without sufficient notice, adequate security, broken equipment, wages and a mandatory deduction for meals that Schoolmeester-Cochran did not use, G.C. Exhs. 2 and 4. On July 11, the employees presented
20 Respondent with a notice that they were returning to work unconditionally and they did so.

On July 11, McMillan and Wilson told the strikers they might have to call the police.

*Written Warning issued to Marshawna Parker
July 16, 2023, interrogation of Parker*

25 Marshawna Parker has worked for Waffle House on and off since 2001 at different restaurants. She worked at store 1470 from March to August 2023. Parker was working at store 1470 on July 1, when the group arrived to present the representation petition. She came over to
30 the area where the crowd was gathered to read the petition to store manager McMillan. On July 8, Parker was one of the employees who went on strike. Her shift had not ended.

35 During the strike, Parker spoke with either TV or print newspeople. On July 15, Parker left work before her shift ended without notifying management.⁴ She left the store and went to the car of a union representative who was giving her a ride home. Store manager McMillan noticed Parker's absence and sent another employee outside to get Parker. McMillan denied knowing that Parker was getting a ride from a union representative. Parker acknowledged to McMillan that it was wrong for her to have left work early, Tr. 73.

40 On July 16, McMillan gave Parker a written warning, G.C. Exh. 7, for leaving the store before the end of her shift without permission on the previous day. Parker had received another write up previously on June 12, 2023, R. Exh. - 5. That warning stated that Parker missed 2

⁴ It is unclear how much before her shift ended Parker left work. It could have been anywhere from 5 to 18 minutes.

shifts within a 2-week period without giving management proper notice. The June notice indicated that future incidents would be dealt with more harshly than another written warning.⁵

Respondent designates the first 30 minutes of an employee's shift and the last 30 minutes, as the "power hour." Employees are not to leave the store during these periods. McMillan mentioned this to Parker on either July 15 or 16. The record contains evidence of 4 other disciplinary warnings issued by McMillan in 2023. One issued in April 2023 was given to an employee for leaving 20 minutes early, R. Exh. 8. There is no evidence that this employee engaged in protected activity.

District Manager Wilson called Parker and asked her why she left early. McMillan called Parker and asked her if Waffle House paid Parker for the time she was on strike and asked her why she did not take her concerns to corporate managers, Tr. 59.

Later, McMillan called again and told Parker she had seen press accounts of what Parker had said to news or TV reporters. She told Parker that, "you slandered my name," Tr. 59. Apparently, news accounts related that Parker told newpeople that Respondent was retaliating against her by cutting her hours. Parker hung up on McMillan.

Analysis

Interrogation

Respondent by unit (store) manager Tyrissa McMillan and District Manager Gregory Wilson⁶interrogated employees about their protected activities, as alleged. However, under Board law, not every interrogation violates the Act. The Board considers the totality of the circumstances of the interrogation, including whether the employee is an open and active union supporter, whether there is a history of employer anti-union hostility or discrimination, the nature of the information sought, the position of the questioner in the company hierarchy and the place and method of interrogation, *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984). The Board also considers the timing of the interrogation and whether other unfair labor practices were occurring or had occurred.

Both Schoolmeester-Cochran and Jessica Gantt were open union supporters, who had just participated in a demonstration inside McMillan's store. As discussed herein, I find the interrogation did not occur in a background of other unfair labor practices. The record does not demonstrate a history of employer anti-union hostility or discrimination. However, both McMillan and Wilson were high enough in the Waffle House hierarchy to adversely affect the terms and conditions of employment of the employees they were questioning. The interrogation was not a casual inquiry and was not brief. The employees were summoned to meet with Wilson and McMillan in the back of the restaurant. This in of itself made the interrogation coercive. The information sought also makes the interrogation somewhat coercive, because it suggests that

⁵ Also see McMillan's testimony at Tr. 112. Parker did not lose any pay as a result of the July written warning.

⁶ McMillan was no longer working for Waffle House by the time of the February 2025 hearing. McMillan testified on behalf of Respondent; Wilson did not testify.

the employees did something wrong in seeking union representation instead of taking their concerns directly to management. Finally, the extent of the interrogation contributes to its coercive nature.

5 As alleged, unit manager Tyrissa McMillan said that she took the employees’ representation petition personally. She and District Manager Wilson told employees that they should go through local management and the chain of command instead of engaging in concerted activities. They also suggested that employees should take their concerns to corporate headquarters. Implicit in these statements is that employees should have voiced their concerns
10 internally rather than seeking union representation. In sum, I conclude that the interrogation violated Section 8(a)(1).⁷

Similarly, I find that McMillan’s inquiry on July 16 as to why employees did not take their concerns to Respondent’s corporate office violated Section 8(a)(1). Implicit in the inquiry
15 was that employees should not have gone to the Union or gone on strike. The context of the inquiry close to the disciplinary warning issue to Parker also contributes to the coercive nature of the question.

Alleged threats to call the police and file a lawsuit

20 The General Counsel alleges that Respondent violated the Act by threatening employees with a lawsuit and threatening to call the police and press criminal charges against employees. This is not precisely supported by the record. Managers did suggest that a demonstration that included non-employees entering the store to protest rather than to patronize the store might lead
25 Respondent to call the police. The non-union employees did not have a right to engage in the activity of July 1 and Respondent could have called the police if the incident recurred or to prevent a recurrence. I find that Respondent’s statements about calling the police did not violate the Act. Moreover, there is no evidence that Respondent called the police who showed up and questioned a striker on July 8.

MacMillan’s statement about violating company policy

30 Respondent, by McMillan did not violate the Act by telling employees that the demonstration by 15-20 people inside store 1470 violated company policy. First of all, Waffle House does not allow such activity by large numbers of non-customers and non-employees, R. Exhs. 3 and 7. Secondly, McMillan did not violate the Act by reminding employees of this policy.

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⁷ Respondent contends that Schoolmeester-Cochran and Gantt did not engage in protected conduct on July 1, 2023. First of all, that does not matter. Respondent’s’ interrogation about their union support violates the Act regardless of whether their activities that day were protected. Moreover, while the actions of the non-employees that day were not protected, the activities of Schoolmeester-Cochran and Gant in presenting employees’ concerns to management was protected. I conclude that employees’ protection of the Act was not forfeited by the behavior of the non-employees.

Tyrissa McMillan’s statements about slander

The General Counsel alleges Respondent, by unit manager Tyrissa McMillan violated the Act on July 16, 2023 by interrogating an employee about statements the employee made to the press and accusing the employee of slander. McMillan called Marshawna Parker about comments she made to the press and accused Parker of slandering her. McMillan’s statement regarding slander was a personal one and if it carried with it a threat of legal action, it was a threat of legal action by McMillan, not by Waffle House.

A manager or other employee acts as an agent of an employer if employees could reasonably believe that the manager or employee was speaking and acting for management on behalf of the employer, *Community Cash Stores*, 238 NLRB 265 (1978). In this instance, I find McMillan was not acting as an agent of Waffle House. Her grievance was personal and if it suggested legal action against Parker, it was legal action by McMillan, not by Waffle House. Parker could not have reasonably concluded on the basis of her conversation with McMillan that Waffle House was threatening to sue her for slander. I dismiss this portion of the complaint.

Marshawna Parker’s written warning.

I find that Respondent did not violate Section 8(a)(3) and (1) of the Act by disciplining employee Marshawna Parker via a written warning. Parker admitted that she violated Respondent’s policies by leaving work before the end of her shift on July 15, 2023. There is no evidence establishing that Parker was disparately disciplined. In fact, the record shows that Respondent could have disciplined Parker much more harshly than it did. The fact that Parker engaged in a protected strike a few days before being disciplined on July 16, 2023, does not establish a violation of the Act when considering the other factors pertaining to Parker’s discipline.

CONCLUSIONS OF LAW

Respondent violated the Act with respect to the following complaint allegations and with respect to no others:

Interrogating employees about the reasons for their union sympathies and activities.

REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

⁸ 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.

ORDER

The Respondent, Waffle House, Inc., its officers, agents, successors, and assigns, shall

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1. Cease and desist from

- a. Interrogating employees about their union sympathies and activities.
- b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

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a. Within 14 days after service by the Region, post at all of its Columbia, South Carolina facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at store 1470 at any time since July 1, 2023.

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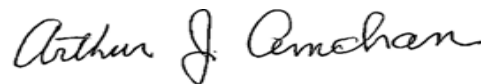
b. Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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c. It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. March 13, 2025

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Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT question you about your union sympathies or activities, including why you went on strike.

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.

WAFFLE HOUSE, INC.

Employer

Dated _____ By _____
Representative (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.
233 Peachtree Street N.E., Harris Tower, Suite 1000, Atlanta, GA 30303-1531
(404) 331-2896, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/10-CA-321421> 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, (404) 331-2870.