

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

STARBUCKS CORPORATION

and

Cases 03–CA–329453
03–CA–332098

WORKERS UNITED

Abigail Snelling, *Esq.*, for the General Counsel.
Ethan D. Balsam, *Esq.*, for the Respondent.
Jacob Multer, *Esq.*, for Counsel the Respondent.
Michael Dolce, *Esq.*, for Counsel the Charging Party.

DECISION

STATEMENT OF THE CASE

CHRISTAL J. KEY, Administrative Law Judge. This case was tried in Buffalo, New York, on December 11, 2024. On October 22, 2024, General Counsel issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (complaint) in Cases 03–CA–329453 and 03–CA–332098. On October 30, 2024, Starbucks Corporation (Starbucks or Respondent) filed an answer in which it denied the essential allegations of the complaint.

The complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) when district manager Varinia Dawn Boyd engaged in surveillance of employees' union activities and created the impression among its employees that their union activities were under surveillance. It also alleges that Respondent violated the Act when store manager Alyssa Schieda called the police because employees were engaged in union activities. After the conclusion of the trial, General Counsel, the Charging Party and Respondent filed briefs, which I have carefully read and considered.

Based on the entire record, including my observation of the demeanor of the witnesses, and after considering the parties' briefs, I make the following

FINDINGS OF FACT¹

I. JURISDICTION

Respondent is a nationwide corporation, which operates public restaurants selling food and beverages. This case involves two stores in Buffalo, New York, known as the Lancaster² and Williamsville Place stores. Respondent annually derives revenue in excess of \$500,000 from each of these stores. It annually purchases and receives at each of these stores goods valued in excess of \$50,000 directly from points outside the State of New York. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

1. Respondent's managers

Respondent groups its stores into districts. Respondent hired Varinia Dawn Boyd as a district manager in Buffalo, New York on May 16, 2022. She held that position until the first week of December 2024, when Respondent moved her into a position as a regional operations coach. (Jt. Exh. 1, Tr. 111.) Sometime just prior to October 26, 2023, Boyd became the district manager for the Elmwood Avenue store which is located in the Buffalo, New York, metropolitan area. (Tr. 27, 72–73.) During the events relevant to this case, Boyd was the district manager for the Lancaster and Williamsville Place stores. (Jt. Exh. 1.) During the events relevant to this case, Alyssa Schieda was the store manager for the Lancaster store. (Jt. Exh. 1.) Schieda and Boyd are supervisors and agents of Respondent within the meaning of Section 2(11) and (13) of the Act. (Jt. Exh. 1.)

2. Michelle Eisen's work history

Respondent hired Eisen as a barista at its Elmwood Avenue store in August 2010. She worked there until she resigned in 2012. Respondent rehired her in February 2013, and she remains employed as a barista at the Elmwood Avenue store. (Tr. 19.) From March of 2023 to March of 2024, Eisen took a "coffee break" which is a yearlong unpaid leave of absence. (Tr. 79.)

¹ Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations but rather are based on my review and consideration of the entire record for this case.

² In the record, and in prior NLRB decisions, the Lancaster store is also referred to as the Transit & Regal store.

3. Eisen's union activities

On August 23, 2021, at the onset of the Union's organizing campaign in Buffalo, New York, Eisen began wearing a union button on her apron at work. (Tr. 19-20.) On December 17, 2021, the Elmwood Avenue store, where Eisen worked, became the first store in the Buffalo area where employees voted to be represented by the Union. *Starbucks Corp. & Workers United*, 374 NLRB No. 10, slip op. at 24 fn. 1, 34 (2024). In February 2022, the Union hired Eisen as a staff organizer. (Tr. 19.) In July 2022 and October 2023, Eisen testified in NLRB proceedings against Respondent. (Tr. 18.) Beginning in mid-September 2021, Eisen began giving interviews to various media outlets regarding the Union's organizing efforts at Respondent's facilities. Since then, she has given dozens of media interviews, including to national media outlets, such as CNBC, NBC, and MSNBC. (Tr. 20, 41.) On September 14, 2022, Eisen testified before Congress to the Education and Labor Committee in a hearing entitled "In Solidarity: Removing Barriers to Organizing." (R. Exh. 2.) She testified about her experience as a barista working for Respondent and the national news media covered her testimony. (Tr. 41, 50.) She has participated in the Union's strikes against Respondent in January 2022, July 2022, October 2022, November 2022, August 2023, and November 2023. (Tr. 20, 42.)

B. Facts Relevant to the 8(a)(1) Surveillance Allegations

1. Reason for Eisen and Boyd's visits to the store on October 26, 2023³

The Union is the collective-bargaining representative of employees at the Williamsville Place store. (Tr. 21.) Union staff organizer and barista Eisen visited the store approximately one time per week to give employees updates about the Union and to check on them. (Tr. 21.) On October 26, between 11:40 and 11:46 a.m., she visited the Williamsville Place store for the purpose of talking to employees about a union action scheduled for November 16, to coincide with Respondent's Red Cup Day promotion. (Tr. 22, 81, GC Exh. 2 at 11:40–11:46.) Red Cup Day is a big sales day for Respondent, because it gives each customer a free reusable cup when they purchase a holiday beverage. (Tr. 21.) Respondent was aware of the planned union action, as its partner relations manager Jacob Barkman sent out a November 10 email providing managers resources to prepare for the Union's actions, which were expected to include "strike/walkout activity in union stores, and customer/partner led engagement in non-union stores." (GC Exh. 4.)

On October 26, Boyd visited the Williamsville Place store to conduct a quarterly planning visit with Store Manager Disha Disha. (Tr. 117–118.) Boyd arrived at the Williamsville Place store at about 11 a.m. and left at about 3:30 p.m.⁴

³ All dates hereinafter are 2023 unless otherwise stated.

⁴ The surveillance videos do not show the entire store, however Boyd is first seen on the video beginning at 11:02 a.m., and she is not seen after 3:32 p.m. (GC Exhs 2 and 3, R. Exh. 4.)

2. Areas of the store contained on Respondent's surveillance video

The parties introduced surveillance video of the store taken on October 26. General Counsel's Exhibits 2 and 3 show the same area of the store, but at different times of the day. They show: (1) the area in front of the cash register where customers wait and place their orders and shop for items to purchase; (2) an area to the right⁵ of the register where customers pick up pre-ordered beverages and food items; (3) a door to the backroom; and (4) the area behind the cash register where employees take customers' orders and place some pre-ordered beverage and food items. Respondent's Exhibit 4 shows surveillance video of the portion of the store to the right of the space in General Counsel's Exhibit's 2 and 3. It shows: (1) a hallway type area where customers wait for and pick up drink orders they placed at the register; and (2) a door going outside the store. There is a second door on the left side of the store and the café portion of the store where customers sit, but those areas are not shown in any of the videos that the parties introduced during the hearing.

3. Boyd and Eisen's conduct on October 26

When Boyd arrived at about 11 a.m., she proceeded to the area behind the cash register and made some notes. (GC Exh. 2 at 11:02:03.) Next, she interacted with a partner and then went over to the left of the store's surveillance video into the café portion of the store where she remained for about 30 minutes. She then took a phone call during which she primarily stood outside the right door of the store. (GC Exh. 2 at 11:30:56–11:31:21, R. Exh. 4 at 11:31:22–11:38:21.) Next, she reentered the store and made her way back to the café area. While she was in the café area of the store, she was meeting with Store Manager Disha. (Tr. 23)

At 11:40 a.m., Eisen entered the store and walked past Boyd and Disha who were sitting in the café portion of the store. (Tr. 23.) Eisen did not know Boyd or Disha, but when she walked by them she saw they had a laptop in front of them with a Starbucks scheduling application open. This indicated to her that they were managers. (Tr. 23.) Eisen approached the register and waited for a barista. (Tr. 24, GC Exh. 2 at 11:40:07.) About 25 seconds later, Boyd approached Eisen and stood within a few feet of her. (GC Exh. 2 at 11:40:35.) Boyd made her presence next to Eisen conspicuous by rocking back and forth from one foot to the other and swinging her arms. Boyd testified she did this because she was dancing to the store's great music. (Tr. 121.) When barista Lexi (last name unknown) stepped to the register to take Eisen's order, Boyd moved closer to Eisen, within about a foot or two of her and stared directly at Eisen, all the while continuing her conspicuous dancing. (GC Exh. 2 at 11:40:43.) Eisen gave Lexi her partner number for her discount. They then talked about which store Eisen worked at. Eisen told Lexi she worked at the Elmwood location, but she had previously worked at the Transit Commons location. (Tr. 24–25.) They also discussed that Eisen knew Shift Supervisor Jessica Lemon from working with her at the Transit Commons location. (Tr. 24–25.) Lexi said she thought she recognized Eisen from her prior visits to the store. (Tr. 24.) At 11:41:30 a.m., Boyd turned away from Eisen, who was still at the

⁵ Throughout this decision, I have referred to individual's location in the store as viewed from the video behind the register. For example, when I speak of an individual moving to the left, I mean that as viewed on the surveillance video they moved to the left.

register with barista Lexi, and stepped into the backroom. (GC Exh. 2.) Ten seconds later, as Eisen started to move to the right to wait for her drink, Boyd returned to the area in front of the register. As Eisen waited for her drink, from 11:41 to 11:44 a.m., Boyd remained in the area near the register facing towards Eisen. The only exception to this, was when Boyd stepped to the backroom briefly for 2 seconds and then later for 8 seconds. (Tr. 26, GC Exh. 2 at 11:41:44 to 11:41:46 and 11:43:42 to 11:43:50.) While Eisen was waiting for her drink, Shift Supervisor Jessica Lemon walked past Eisen and they spoke. (Tr. 25–26.) Eisen then picked up her drink and approached the cash register to talk to Lemon. (GC Exh. 2 at 11:44:24.) As soon as Eisen started talking to Lemon, Boyd again approached Eisen and positioned herself about one or two feet from Eisen. (GC Exh. 2 at 11:44:25.) Eisen and Lemon discussed a friend who had been ill and talked about making plans to get together. (Tr. 26–27.) Boyd then walked to the right of Eisen and continued standing within about a foot of her. At this point, Lemon moved to the right, stood in front of Boyd and looked directly at her. Lemon appeared to be ready to take Boyd’s order. (GC Exh. 2 at 11:44:43.) Eisen testified that based on Boyd’s close proximity to her, she felt that Boyd was attempting to inject herself into Lemon and Eisen’s conversation. Thus, Eisen turned to Boyd and said, “Have we met?” (Tr. 27.) Boyd responded no. Eisen replied, “I am Michelle” and Boyd replied, “Nice to meet you.” The two shook hands. (GC Exh. 2 at 11:44:49, Tr. 33, 71, 79.) Eisen then asked Boyd if she was Varina and Boyd responded, “I’m Dawn.” Boyd then said to Eisen, “You’re on a coffee break right?” to which Eisen replied that she was. (Tr. 79.) The two then discussed how Eisen was enjoying her coffee break, and Boyd asked Eisen if she had any children. Eisen left the store at 11:45:26, and Boyd continued to stand near the register across from Lemon. While Eisen visited the Williamsville Place store to talk to employees about the union action scheduled for November 16, to coincide with Respondent’s Red Cup Day promotion, she was not able to speak with them about the matter. (Tr. 21, 81.)

Boyd’s conduct during the period of time that Eisen was in the store was significantly different from any other period that she was in the store between 11 a.m. and 3:30 p.m. It was different because there was no other period of time that she stood in the area in front of the register where she could watch customers and/or employees for as long as she did while Eisen was in the store. Rather, between 11 a.m. and 12:10 p.m., she spent the vast majority of her time in the café portion of the store out of the area covered by either of the store’s surveillance cameras. (GC Exhs. 2 and 3, R. Exh. 4.) From 12:10 p.m. to 3:30 p.m., Boyd spent almost all of her time in the backroom of the store coming out only briefly on a few occasions.⁶ (GC Exh 3.) Further, Boyd did not approach or stare at any other customers as they spoke to Respondent’s employees in the same way she had when Eisen spoke to Lexi and Lemon. Finally, Boyd did not stand as close to any other customers as she did Eisen.

C. Facts Relevant to the 8(a)(1) Allegation Involving Schieda Calling the Police

On November 16, the Union conducted an action at the Lancaster store where three employees and two nonemployees passed out handbills in which the Union appealed to its

⁶ At 2:46 p.m., Boyd came out of the backroom with her purse, cellular phone and charging cord and walked to the left toward the café portion of the store. She returned to the backroom at 3:20 p.m. It is unclear whether, during this period, she was in the café portion of the store or she left the store through the door on the left side of the store.

customers to ask for their help in getting Respondent to come to the bargaining table and negotiate with the Union. (Tr. 34–35.) The Union’s action was scheduled from 1 to 2 p.m. (Tr. 35.) The following individuals participated in the handbilling: employees Eisen, Beny Ulo, and Jasmine Leli, and nonemployees Ray Jensen and Dan (last name unknown). (Tr. 36–37, 83, 85.) Eisen, Ulo, Leli and Jensen stood on Respondent’s property near the side entrance. (Tr. 37, 90.) Dan stood near the entrance to one of the two drive-thru lanes. (Tr. 38.) Respondent introduced a photograph showing the Lancaster store, the two drive-thru entrances and the roads around the store. (R Exh. 3, Tr. 22, 92.) There are two drive-thru entrances. The first entrance is perpendicular to Freeman Road shown on the map, it curves to the left to merge into the second lane. The second entrance is parallel to Freeman Road. Dan stood near the first entrance which is perpendicular to Freeman Road. (Tr. 56, 62, 78, 92.) Dan stood next to the drive-thru entrance and passed out handbills to customers as they entered the drive-thru. (Tr. 37–38, 62, 78–79, 85, 100.)

During the handbilling, Boyd walked outside of the store. She walked over and spoke to Dan near the drive-thru. Boyd stated she was concerned about the handbiller’s safety because of him being near the drive-thru and she would appreciate it if he did not block the drive-thru lane. (Tr. 86, 95–96.) She told him he could not be there. (Tr. 38, 59.) When Boyd approached Dan, Jensen walked over and joined them. Boyd told Dan he was trespassing and if he did not leave she would call the police. (Tr. 38, 59.) Dan told Boyd that he was not blocking anything and that she could call the police if she wanted to. (Tr. 95, 97.) Leli and Eisen both testified that while they did not keep their eyes trained on Dan during the entire period that they were at the store, they never saw Dan stand in the drive-thru entrance or block or obstruct vehicles from entering the drive-thru. (Tr. 37–38, 62, 78–79, 85, 96, 100.) Boyd directed Schieda to call the Lancaster Police Department because of the handbillers. (Tr. 140.) At 1:21 p.m., Schieda called the police. She reported that there were unwanted guests at Respondent’s facility. She stated that there were five to six protestors in the drive-thru passing out pamphlets and refusing to move or leave. (GC Exh. 5 at Exh. A.) Officers from the Lancaster Police Department arrived at the Lancaster store at 1:34 p.m. When the police arrived, they told the employee and nonemployee handbillers that Starbucks had reported that they were trespassing and wanted them off their property, and that they needed to leave. (Tr. 39–40, 61, 88, 100.) All the handbillers then left the store. (Tr. 61.)

III. CREDIBILITY

A. Respondent’s Failure to Call Alyssa Schieda

The General Counsel presented Eisen and Leli to testify about what transpired on November 16. Respondent presented Boyd. The complaint alleges Respondent violated the Act by Schieda calling the police. I draw an adverse inference from Respondent’s unexplained failure to call Schieda as a witness. *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15 at fn. 1 (1977). The adverse inference rule consists of the principle that “when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.” *Sparks Rest*, 366 NLRB No. 97, slip op. at 10 (2018), and *Auto Workers v. NLRB*, 459 F.2d 1329, 1335–1336 (D.C. Cir. 1972). “When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have

knowledge.” *Champion Rivet Co.*, 314 NLRB 1097, 1098 fn. 8 (1994). “It may be inferred that the witness, if called, would have testified adversely to the party on that issue.” *Id.* Boyd testified that she observed the handbiller Dan stepping into the drive-thru lane and was blocking customers from entering the lane. Eisen and Leli testified that while they did not keep their eyes trained on Dan the entire time they were at the store, they never saw him step into the drive-thru entrance or lane. (Tr. 37–38, 62, 78–79, 85, 100.) Boyd testified that after she spoke with Dan, she asked Schieda to go back out and verify whether Dan was still stepping into the drive-thru lane. (Tr. 140.) Boyd testified that Schieda reported that Dan was still stepping into the drive-thru lane, which Boyd testified caused her to direct Schieda to call the police. (Tr. 140, 144, 149.) Thus, Schieda’s testimony was relevant to corroborate Boyd’s testimony that Dan was stepping into the drive-thru lane while he was handbilling. I draw the adverse inference that had Respondent called Schieda she would have provided testimony which was adverse to Respondent on the issue of whether Dan was stepping into the drive-thru. Further, I draw the inference that had Respondent called Schieda to testify, she would have provided unfavorable testimony that when she called the Lancaster Police Department she sought the removal of all five employee and nonemployee handbillers, as opposed to just the two nonemployees. This inference is supported by the police report which states that Schieda reported that there were unwanted guests on Respondent’s property. She described the unwanted guests to the police as five to six protestors. (GC Exh. 5 at Exh. A.) Consistent with that report, when the police arrived they in fact advised all five handbillers that Starbucks wanted them all off their property. (Tr. 39–40, 87–88.)

B. Varina Dawn Boyd

I discredit Boyd’s testimony except where it was adverse to Respondent’s case. I base this finding on her demeanor, that her testimony was internally inconsistent, contradicted by video and other credible evidence, it was at times illogical, and because Respondent did not call Schieda to corroborate Boyd’s testimony.

Boyd’s testimony was internally inconsistent and contradicted by Respondent’s surveillance video. Boyd testified that she had no idea who Eisen was when she came into the store, and that the reason she continually stood in the front area of the store and approached and stood next to Eisen as she spoke to Lexi and again when she spoke to Lemon, was because Boyd wanted to order a drink. (Tr. 120, 121, 124–125.) Respondent’s surveillance video evidence contradicts Boyd’s testimony. The video shows Boyd did not order a drink between 11:40 a.m., when Eisen entered the store and 11:46 a.m., when she left the store. (GC Exh. 2.) Boyd attempted to explain this contradiction by testifying that she stood in these areas of the store because she was “looking for an opening to order [her] drink,” but she did not order one because she wanted to give other customers, who were waiting, priority. (Tr. 123–124.) However, the store’s surveillance video shows there were multiple occasions during the period that Eisen was in the store where there were no customers in line to place orders at the register. (GC Exh. 2 at 11:40 to 11:46.) Moreover, after Eisen picked up her drink at 11:44 a.m., she stepped back to the register to talk to Lemon who was near the cash register. As Eisen visited with Lemon, Boyd again approached Eisen and stood about a foot or two from her. Eisen and Lemon visited about a friend who had been ill and discussed making plans to get together. (Tr. 26–27.) Next, Lemon moved to her right and stood directly in front of Boyd and looked directly at her, making it clear she was free to take Boyd’s order. (GC Exh. 2 at 11:44:43.) Despite the fact that, there were no customers at the register, and Boyd knew Lemon was free to take her order because Boyd had stood right next to

Eisen as she chatted with Lemon, Boyd still did not place a drink order. After Eisen left the store, at 11:45:26 Boyd stood near the register with Lemon standing at the register available to take her order and with no other customers in the area, but again Boyd failed to place a drink order. Additionally, after Eisen left the store there were multiple times when there were no customers at the register for extended periods of time, yet Boyd failed to place a drink order. (GC Exhs. 2 and 3 at 11:45:20 to 11:52:47, 11:56:48 to 12:07:55.) Finally, at 12:14 p.m., Boyd approached the counter and visited with barista Lexi while there were no customers at or near the register, but again Boyd failed to place a drink order. (GC Exh. 3.) This evidence demonstrates that Boyd's testimony was not truthful that she stood near the register and close to Eisen for the purpose of placing a drink order. Boyd did not order a drink or purchase any food items until 1:42 p.m. (GC Exh. 3 at 1:42:00 to 1:44:26.)

Further, Boyd's conduct later in the day demonstrates that contrary to her testimony she did not give customers priority when making her own purchases. (Tr. 123–124.) At 3:21 p.m., Boyd came out of the backroom while a female customer in a white shirt stood at the register. Boyd then shopped for an item to purchase. While Boyd was shopping, two female customers in blue shirts joined the line to place an order at the register. (GC Exh. 3 at 3:21:43.) Boyd then got in line and waited behind them. As Boyd waited in line, a female customer in a red shirt joined the line and waited behind Boyd. At 3:23 p.m., the two female customers in the blue shirts stepped away from the register to wait for their drinks and the employee working at the register stepped away presumably to help prepare pending orders. At this point, Boyd stepped up to the register and waited for an employee to return to make her purchase, despite the fact that employees were busy making other customers orders and a female customer was waiting in line behind her. (GC Exh. 3 at 3:23:16.) When the employee returned, the female customer in the red shirt was still waiting behind Boyd. Rather than letting the customer go ahead of her, Boyd purchased a food item. (GC Exh. 3 at 3:23:44.) Thus, contrary to her testimony, Boyd did not give customers waiting in line or waiting to receive their drinks priority over herself.

Because of the store's surveillance camera, there is no dispute about Boyd's physical conduct at the Williamsville Place store during Eisen's October 26 visit. What is in question is Boyd's purpose for repeatedly approaching Eisen when she spoke to employees and for standing in the area in front of the register and watching Eisen. (GC Exh. 2 at 11:40 to 11:46.) I discredit Boyd that her purpose for this conduct was because she wanted to order a drink. Based on the record as a whole, including Eisen's prolific union activity which was widely disseminated through the nationwide news media, I find Boyd knew who Eisen was when she stepped next to her at the register on October 26, and that she suspected Eisen was at the store to engage in union activity. I find she stood next to Eisen and watched her in order to surveil Eisen and other employees' union activities or prevent such.

I further discredit Boyd's testimony because her testimony regarding the handbiller stepping in front of cars in the drive-thru lane was illogical, contradicted by other credible witnesses, and was not corroborated by Schieda who was present and allegedly observed the same things as Boyd. Boyd testified that she observed a handbiller by the name Dan, continually stepping into the drive-thru lane and his conduct was so unsafe that she thought "oh my goodness, this person is going to get hit by a car." (Tr. 146–147, 149.) I find Boyd's testimony illogical that a person handbilling would be willing to put themselves at such risk of harm simply to distribute a union handbill. Further, as discussed above, Respondent failed to call Schieda as a witness.

According to Boyd, Schieda reported to her that she too had observed Dan stepping into the drive-thru lane. (Tr. 130, 140, 144, 149.) Respondent chose not to call Schieda to corroborate what is a critical part of Respondent's defense. Thus, I infer that had Respondent called Schieda she would not have corroborated Boyd's testimony that Dan was stepping into the lane and putting himself at risk of being injured. I credit Leli and Eisen's consistent and more logical testimony that Dan did not step into the drive-thru lane or block traffic. (Tr. 38, 62, 78, 85, 100.) I further discredit Boyd's testimony regarding where Dan stood on November 16, because Eisen and Leli consistently testified that Dan stood near the first drive-thru lane which was perpendicular to Freeman Road. (Tr. 56, 62, 78, 92.) Conversely, Boyd is the only one who placed Dan next to the speaker box in the second drive-thru which is parallel to Freeman Road. (Tr. 92, 167.)

C. Michelle Eisen

I credit Eisen's testimony. I base this on her demeanor, the fact that her testimony was consistent with the surveillance video and the testimony of the General Counsel's other witness.

There was one area where Eisen's testimony was inconsistent. She initially testified that on October 26, it was Boyd who recognized her and said, "you're Michelle right." (Tr. 27.) However, later, during her direct testimony, Eisen testified that it was Eisen that introduced herself to Boyd by saying, "I'm Michelle." (Tr. 44.) Next, during cross-examination, Eisen again testified that it was Boyd who said to her "you're Michelle, right." (Tr. 70.) Respondent's attorney then presented Eisen with her pre-hearing affidavit in which Eisen testified that she introduced herself to Boyd. (Tr. 71.) Eisen immediately acknowledged that the testimony in her affidavit, which was given on December 12, which was a month and a half from the October 26 events, was more accurate. (Tr. 71.) Respondent's brief argues that based on this inconsistency, I should discredit Eisen. (R. Br. at 8.) This testimony does weigh against her credibility. However, I note that on direct examination, Eisen provided testimony which was consistent with her affidavit that it was Eisen who introduced herself. (Tr. 44.) This indicates that Eisen was not attempting to embellish her testimony. Further, when presented with the affidavit, she readily acknowledged her mistake and testified that she introduced herself to Boyd. (Tr. 71.) On whole, I found Eisen to be a credible witness. Further, I found her to be a more credible witness than Boyd because she readily admitted her error, whereas Boyd's testimony was filled with repeated instances where her testimony was inconsistent with other evidence in the record.

I credit Eisen over Boyd, that it was Boyd who mentioned that she knew Eisen was on a coffee-break during their October 26 conversation. (Tr. 28, 72, 125–126.) This testimony is important because it demonstrates Boyd's prior knowledge of Eisen. It further, indicates Boyd knew about Eisen's extensive and very public union activities, such as testifying before Congress about union organizing, giving interviews to national media outlets, testifying at NLRB proceedings, participating in job actions against Respondent, and visiting Respondent's stores to update employees about the Union.

Further I credit Eisen's testimony because Leli corroborated it. For example, both Eisen and Leli testified that they did not see Dan step into the drive-thru lane. (Tr. 37, 79, 85, 100.) I find their testimony more credible than Boyd's testimony because it was corroborated and more logical than Boyd's testimony that Dan was stepping into the drive-thru lane with his whole body and risking getting hit.

D. Jasmine Leli

I fully credit Leli's testimony. Leli testified about the events of November 16. I credit her testimony based on her demeanor, because her testimony was internally consistent, and because she did not attempt to embellish her testimony. For example, she readily admitted that while she did not keep her eyes trained on Dan during the entire time she was at the store, she did not see him step into the drive-thru lane. Further, I credit Leli's testimony that Dan did not step into the drive-thru lane because it was corroborated by Eisen.

IV. ANALYSIS

A. Boyd's Alleged October 26, Surveillance at the Williamsville Place Store

Paragraphs 6(a) and (b) of the complaint allege that on October 26, Boyd engaged in surveillance of employees' union activities and created an impression among employees that their union activities were under surveillance.

An employer violates Section 8(a)(1) when it surveils employees engaged in Section 7 activity by observing them in a way that is "out of the ordinary" and thereby coercive. *Sands Hotel & Casino, San Juan*, 306 NLRB 172 (1992), enf'd. sub nom. *S.J.P.R., Inc. v. NLRB*, 993 F.2d 913 (D.C. Cir.1993). However, an employer's mere observation of open, public union activity on or near its property does not constitute unlawful surveillance. *Fred'k Wallace & Son, Inc.*, 331 NLRB 914 (2000). In determining whether an employer has violated Section 8(a)(1) of the Act by creating an impression of surveillance, the Board looks at whether employees would reasonably assume from the statement or conduct, that their union activities have been placed under surveillance. *United Charter Service*, 306 NLRB 150 (1992); *South Shore Hospital*, 229 NLRB 363 (1977); and *Schrementi Bros. Inc.*, 179 NLRB 853 (1969).

Boyd's conduct during Eisen's October 26, visit, was out of the ordinary and thereby coercive. About 25 seconds after Eisen arrived at the cash register to place her order, Boyd got up from the café area of the store and stood just a couple of feet from Eisen. (GC Exh. 2, at 11:40:07–11:40:34.) As she stood next to Eisen, Boyd rocked back and forth from one foot to the other and swung her arms which ensured that Eisen observed her presence. Boyd testified she did this because she was dancing to the store's great music. (Tr. 121.) When barista Lexi stepped to the register, Boyd moved even closer to Eisen and stared directly at her, all the while continuing her "dancing". (GC Exh. 2 at 11:40:43.) During the 3 minutes that Eisen waited for her drink, Boyd remained in the area near the register facing towards Eisen except for two occasions when she stepped to the back room briefly for a few seconds. (GC Exh. 2 at 11:41:44 to 11:41:46 and 11:43:42 to 11:43:50.) Next, after Eisen picked up her drink she approached the register to speak with Lemon. Yet again, Boyd moved toward Eisen and stood within about a foot or two from her. Eisen recognizing that Boyd was attempting to inject herself into Eisen's conversation with Lemon, Eisen turned to Boyd and asked, "Have we met?" (Tr. 27.) Boyd responded no. Eisen replied "I am Michelle" and Boyd replied nice to meet you and the two shook hands. (GC Exh. 2 11:44:49, Tr. 33, 71, 79.) Boyd then questioned Eisen by asking, "Your on a coffee break right?" to which Eisen replied that she was. (Tr. 79.)

Boyd's conduct while Eisen was in the store was out of the ordinary because it was different from any other of her conduct while she was in the store on October 26, between 11:02 a.m. and 3:32 p.m. While Boyd was in the store, there was no other occasion that she stood as close to any other customers as she did Eisen, nor did she stare at them or dance as she stood by them. For example, from 3:21 to 3:25 p.m., Boyd stood in line with three other customers, yet during this period she stood a socially appropriate distance from them, did not dance, and did not stare at them. Further, during Eisen's entire visit, Boyd stood in the front area of the store right next to Eisen or facing towards her, except for a couple of occasions, lasting only a few seconds, when she stepped into the backroom. (GC Exh. 2 at 11:40–11:46.) There was no other occasion, on October 26, that Boyd stood in that area for anywhere near that length of time. (GC Exh. 2 and 3.) Rather, between 11 a.m. to 12:10 p.m., Boyd spent almost all her time in the café portion of the store and from 12:10 to 3:30 p.m., she spent almost all her time in the backroom. (GC Exhs. 2 and 3.)

The record as a whole, demonstrates that when Eisen stepped to the register in the Williamsville Place store on October 26, Boyd was aware of Eisen's prior union activities and that she was potentially at the store to engage in union activities with Respondent's employees. Eisen worked at the Elmwood store which was Respondent's first store in the Buffalo area where employees voted to become represented by the Union. *Starbucks Corp. & Workers United*, 374 NLRB No. 10, slip op. at 34 (2024). Further, after Boyd became a Buffalo area district manager in May 2022, Eisen engaged in widely publicized union activities. For example, on September 14, 2022, Eisen testified before Congress to the Education and Labor Committee in a hearing entitled "In Solidarity: Removing Barriers to Organizing". (R. Exh. 2.) Eisen testified about her experience as a barista working for Respondent and the national news media covered her testimony. (Tr. 41, 50.) Eisen gave dozens of media interviews including interviews to national news outlets including CNBC, NBC, and MSNBC. (Tr. 20, 41.) In July 2022 and October 2023, Eisen testified in NLRB proceedings against Respondent. (Tr. 18.) Based on the highly publicized nature of Eisen's union activities, along with Boyd's out of the ordinary conduct during Eisen's October 26 visit, I find Boyd knew of Eisen's union activities prior to October 26, and she stood next to Eisen to surveil employees' union activities or prevent such.

Boyd and Eisen's conduct on October 26, further demonstrate that Boyd knew that Eisen was at the store to potentially engage in union activities. First, when Eisen entered the store it would have been evident to Boyd that she knew employees who worked in the store because at 11:40:07, Eisen can be seen in the surveillance video greeting someone by turning and waving to them. (GC Exh. 2.) Further, as Boyd stood next to Eisen as she placed her order with Lexi, Eisen provided her employee number for her discount, thus making it clear she was a Starbucks employee. Additionally, Eisen and Lexi talked about the fact that Eisen worked at the Elmwood store and Lexi said she recognized her from her prior visits to the store. (Tr. 24.) Further, later when Boyd approached Eisen as she spoke to Lemon, Eisen introduced herself to Boyd and Boyd responded by asking "you're on a coffee break right?" (Tr. 28.) This comment indicates that Boyd knew of Eisen prior to October 26. Finally, Boyd's conduct of positioning herself right next to Eisen both when she spoke to Lexi and later when she spoke to Lemon indicate that Boyd knew

Eisen was at the store to potentially engage in union activities and Boyd stood right next to Eisen and watched her in order to surveil employees' union activities or prevent such.

Respondent cites *Aladdin Gaming, LLC.*, in support of their position that Boyd's conduct did not violate the Act. 345 NLRB 585 (2005). In that case, as well as others, the Board stated, that an employer's mere observation of open, public union activity on or near its property does not constitute unlawful surveillance. In that case, managers stood near employees for 2 minutes as they openly solicited union authorization cards in the employer's dining room. There, the supervisors' conduct was found to be routine and not "out of the ordinary" because the managers regularly ate meals in the dining room and employees' union activity was in the open. *Id.* at 586. Conversely, as discussed above, Boyd's conduct was out of the ordinary because it was different from her conduct during any other portion of the day that she was in the store. Further, her conduct was out of the ordinary because simply put, Boyd's conduct toward Eisen was rude and socially inappropriate. It is inconceivable that Respondent would want its managers to treat its customers in the way Boyd treated Eisen.

Boyd violated Section 8(a)(1) because her conduct of approaching Eisen as she spoke to employees and watching her the entire time she was in the store was out of the ordinary and thereby coercive. *Sands Hotel & Casino, San Juan*, *supra*. Further, based on that conduct, employees would have reasonably assumed, that Boyd intended to surveil their union activities or prevent them from engaging in such. *United Charter Service*, *supra*.

Respondent violated Section 8(a)(1) of the Act by Boyd engaging in surveillance of Eisen as she attempted to engage in union activities and by creating an impression among its employees that their union activities were under surveillance.

B. Allegation that Schieda Violated 8(a)(1) by Calling the Police to the Lancaster store

Paragraph 7 of the complaint alleges that on about November 16, Respondent violated Section 8(a)(1) by Alyssa Schieda calling the police on employees because they were passing out handbills at the Lancaster store.

"It is well established that an employer may seek to have police take action against pickets where the employer is motivated by some reasonable concern, such as public safety or interference with legally protected interests." *Nations Rent, Inc.*, 342 NLRB 179, 181 (2004) (citing *Great American*, 322 NLRB 17, 21 (1996)). An employer can take reasonable steps to prevent nonemployees from trespassing onto private property. See generally *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992) (employer may lawfully bar nonemployee union organizers from private property unless the employees are inaccessible through usual channels). However, an employer violates Section 8(a)(1) of the Act when they call the police or threaten to call the police in response to protected employee hand billing activity. *Roadway Package Systems Inc.*, 302 NLRB 961 (1991); *All American Gourmet*, 292 NLRB 1111 fn. 2 (1989).

The individuals who distributed handbills at the Lancaster store on November 16, fell into two categories: (1) Eisen, Leli, and Ulo were employees; and (2) Dan and Ray Jensen were nonemployees. Boyd knew that Eisen was an employee because the two had spoken just weeks

earlier on October 26. Prior to Boyd directing Schieda to call the police, Dan introduced himself to Boyd as a representative of the United Auto Workers Union. (Tr. 134.) As discussed in detail in the credibility section of this decision, I find that Dan was not stepping into the drive-thru lane or creating a reasonable public safety concern. Yet, Respondent had the right to call the police regarding Dan and Ray Jensen because it had a reasonable concern that they were trespassing onto its private property and thus interfering with Respondents “legally protected interests”. *Nations Rent, Inc.* supra. However, when Schieda contacted the Lancaster police she did not seek only to have Dan and Ray Jensen removed, instead she sought the police’s assistance to remove all those present, including the three employees who were engaged in lawfully protected handbilling. There were only five handbillers present on November 16, and Schieda reported that there were unwelcome guests at the store which she described to the police as “5–6 protestors” who were in the drive-thru passing out pamphlets and refusing to move or leave. (GC Exh. 5 at Exh. A.) Consistent with Schieda’s request to have the five to six protestors removed, when the police arrived, they instructed both the employee and nonemployee handbillers that Starbucks said they were trespassing and “Starbucks wanted us [all five of the handbillers] off their property.” (Tr. 39–40, 61, 80, 87–88, 101.) Thus, Respondent violated Section 8(a)(1) of the Act because Schieda called the police in order to have employees engaged in lawful handbilling removed from Respondent’s property. *Roadway Package Systems Inc.*, Id; *All American Gourmet*, Id..

Respondent violated Section 8(a)(1) of the Act by calling the police to remove employees engaged in protected handbilling activity.

V. Respondent’s Challenge to the Constitutionality of the Trial Proceedings

Respondent maintains that the trial proceedings in this case are unconstitutional because the agency’s structure violates the separation of powers insofar as the statute creating the National Labor Relations Board (29 U.S.C. Section 153 (a)) only permits the President to remove Board members for neglect of duty or malfeasance in office. (R. Br. at 14–15.) The Board has explained that Supreme Court precedent recognizes “that Congress may establish expert agencies like the Board, led by a group of principal officers [who are] removable by the President only for good cause.” *SJT Holdings Inc.*, 372 NLRB No. 82, slip op. at 1–2 (2023) (citing *Humphrey’s Ex’r v. United States*, 295 U.S. 602 (1935)). Following the Board’s approach, I decline Respondent’s invitation to revisit that precedent here, and deny Respondent’s challenge to the constitutionality of the agency’s structure.

Respondent also contends that the trial proceedings in this case are unconstitutional because the agency’s administrative law judges have three layers of removal restrictions, and Article II of the Constitution forbids imposing multilevel protection from removal on executive officers. (R. Br. at 16.) I find that this constitutional question is a matter for the federal courts to decide. Further, since ruling on the constitutional question here would entail halting (at least in part) the operation of the agency, and such a step would be in tension with my duty to faithfully administer the Act, I deny Respondent’s constitutional challenge with the understanding that a federal court may address the issue at some point in the future. See *National Association of Broadcast Employees & Technicians–the Broadcasting & Cable Television Workers Sector of the CWA, Local 51 (NABET)*, 370 NLRB No. 114, slip op. at 1–2 (2021) (setting forth similar

reasoning in declining to rule on a challenge to the constitutionality of the President’s removal of the General Counsel and the appointment of an Acting General Counsel).

Respondent contends that the current proceeding violates the Seventh Amendment’s guarantee to a jury in all “suits at common law, where the value in controversy shall exceed twenty dollars.” U.S. Const. amend. VII; see also *Securities & Exch. Comm’n v. Jarkesy*, 144 S.Ct. 2117, 2120 (2024). Respondent’s argument is inapplicable to this case because the present complaint does not seek any monetary remedy.

CONCLUSIONS OF LAW

1. 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. Respondent by Varina Dawn Boyd violated Section 8(a)(1) by engaging in surveillance of employees while they attempted to engage in union activities and creating an impression among its employees that their union activities were under surveillance.

4. Respondent by Alyssa Schieda violated Section 8(a)(1) by calling the police and asking them to remove employees engaged in protected union activity.

5. Respondent’s unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

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.

General Counsel requests a notice reading. The Board generally grants such a remedy, where the unfair labor practices are so pervasive and egregious that a notice reading is necessary to dispel the impact of such conduct. *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007); *Domsey Trading Co.*, 310 NLRB 777, 779–780 (1993). In this case, a notice reading is warranted. The Board has previously found a notice reading to be appropriate because Respondent has engaged in severe and pervasive unfair labor practices at its stores in the Buffalo-area, including at its Lancaster⁷ and Williamsville Place stores. *Starbucks Corp. & Workers United*, 374 NLRB No. 10, slip op at 20 (2024). A public notice reading will help “dissipate as much as possible any lingering effects” of the unfair labor practices at issue herein. *Homer D. Bronson Co.*, *supra*.

⁷ In that decision the Lancaster store is referred to as the Transit & Regal store.

ORDER

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

1. Cease and desist from

(a.) Engaging in surveillance of employees' union activities and creating an impression among employees that their union activities are under surveillance.

(b.) Calling the police and asking them to remove employees engaged in protected union activity.

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

(a.) Within 14 days after service by the Region, physically post the Notice to Employees attached hereto and marked "Appendix " ⁸ at Respondent's Williamsville Place and Lancaster facilities. Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, text message, posting on social media websites 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed a facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent since October 26, 2023.

(b.) During any ordered 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 in compliance with the notice posting, distribution, and mailing requirements.

(c.) Hold meetings during work time at its Williamsville Place and Lancaster stores in Buffalo, New York, scheduled to ensure the widest possible attendance of employees, at which the attached notice marked "Appendix" shall be read to employees by Varina Dawn Boyd (or an equally high-ranking management official if the Respondent no longer employs Boyd), in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of Varina Dawn Boyd and, if the Union so desires, the presence of an agent of the Union.

⁸ 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."

(d.) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 3, 2025.

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A handwritten signature in black ink, reading "Christal J. Key". The signature is written in a cursive, flowing style.

Christal J. Key
Administrative Law Judge

Niagara Center Building,
130 S. Elmwood Avenue, Suite 630

Buffalo, NY 14202–2465
(716) 551–4931, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge’s decision can be found at www.nlr.gov/case/03-CA-329453 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, (716) 551–4931.