JD–35–25
Seattle, WA

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

STARBUCKS CORPORATION

and Case 04-CA-335181

WORKERS UNITED LABOR UNION INTERNATIONAL, affiliated with SERVICE EMPLOYEES INTERNATIONAL UNION

and

BRIA GARVEY, an Individual

Case 04-CA-347511

Lea F. Alvo-Sadiky, Esq.,
for the General Counsel.
Kevin Kraham, Esq. and
Alex Frondorf, Esq.,
for the Respondent.
Juliana DeFillipis, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

SUSANNAH MERRITT, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on December 17–19, 2024. Workers United Labor Union International affiliated with Service Employees International Union (the Union) filed the charge in Case 04–CA–335181 on February 2, 2024, first amended charge on June 17, 2024, and second amended charge on October 31, 2024. Bria Garvey (Garvey), an individual, filed a charge in Case 04–CA–347511 on August 2, 2024. The Acting Regional Director of Region 4 issued an Order consolidating cases, consolidated complaint, and notice of hearing (complaint) on November 4, 2024. The complaint alleges that Starbucks Corporation (Starbucks or Respondent): (1) violated Section 8(a)(1) of the Act by maintaining a solicitation and distribution rule that restricts employees' Section 7 rights; (2) violated Section 8(a)(1) of the Act by directing employees not to

engage in union activity while they are on the clock; (3) violated Section 8(a)(1) of the Act by telling employees that Respondent's policies supersede employees' Section 7 rights; (4) violated Section 8(a)(1) and 8(a)(5) by more strictly enforcing its Attendance and Punctuality policy since about April 20, 2023, without notifying and bargaining with the Union; (5) violated Section 8(a)(1), 8(a)(3) and 8(a)(5) of the Act by issuing a final written warning to employee Lydia Fernandez; and (6) violated Section 8(a)(1), (3), and (5) of the Act by discharging Lydia Fernandez and Bria Garvey.

Respondent filed and answer to the complaint on November 18, 2024.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Seattle, Washington, and various locations throughout the United States and in Philadelphia, Pennsylvania, including at the 20th & Market Store, has been engaged in the retail operations 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 each of its Philadelphia facilities products, goods, and materials valued in excess of $5000 directly from points outside the Commonwealth of Pennsylvania. 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. (Jt. Exh. 1.)

II. ALLEGED UNFAIR LABOR PRACTICES

Background

Respondent operates a chain of over 9000 retail coffee stores across the country. Each store is staffed with a manager, shift supervisors, and baristas. Some stores have assistant store managers, including the 20th & Market Store (the Store). Shift supervisors and baristas are statutory employees under the Act. (Jt. Exh. 1.)

The Union filed a Petition for Election on February 4, 2022, seeking to represent all full-time and regular part-time Baristas and Shift Supervisors employed by Respondent at the Store. Region Four held an election at the Store on May 25, 2022. The Union won the election and a Certification of Representative issued on June 3, 2022. Although the Union was certified in 2022, Respondent and the Union have not yet reached a collective bargaining agreement.

In a prior case, the Union filed several unfair labor practice charges against Respondent involving the same store, including allegations that from February through July 2022, store manager Whitney Grubbs violated Section 8(a)(1) and 8(a)(3) of the Act by: refusing Weingarten rights; maintaining rules which employees would reasonably construe to discourage them from engaging in union or other protected concerted activities; more stringently enforcing Respondent's dress code policy, and discharging a lead union adherent. *Starbucks Corp.*, JD-50-

23, 2023 WL 5140070. These alleged unfair labor practices were litigated before administrative law judge Michael Rosas from March 20–31, 2023.[1] Judge Rosas issued his decision in August finding, inter alia, merit to the allegations that Respondent at the Store violated the Act by: refusing Weingarten rights; maintaining rules which employees would reasonably construe to discourage them from engaging in union or other protected concerted activities; more stringently enforcing Respondent's dress code policy, and discharging a lead union adherent in retaliation for their union and protected concerted activity. Id. That decision is currently pending before the Board on appeal.

Since the Union was certified in June 2022, the partners at the Store regularly engaged in Union demonstrations such as national strikes and "March on the Boss" events. Specifically, the partners participated in national strikes on November 17, 2022, December 16, 2022, March 22, May 23, and November 16; and at least four "March on the Boss" events since certification. Mikeira Cole (Cole), who became Store Manager for the Store in March, testified that she personally observed at least 14 of the Store's employees engage in union activities, such as wearing a union pin and participating in walkouts and strikes, while she was manager.[2] A "March on the Boss" event is when partners get together and write a letter to management to address a specific grievance that one or more of the partners feels has not been addressed by management. During these occasions, employees will step away from their stations and gather around the manager on shift and one of the partners will read the letter aloud to the manager. Once the letter is read, the employees return to work. Baristas Lydia Fernandez (Fernandez) and Sarah Shields (Shields) were open union leaders, organizing the strikes, walking on picket lines, and attending bargaining sessions. As set forth in more detail below, barista Bria Garvey (Garvey) read a "March on the Boss" letter to management at the Store in January 2024. (Tr. at 44, 122–128, 293–294, 402–411; Jt. Exh. 1; GC Exhs. 4–8.)

Attendance and Punctuality Policy

When employees are first hired at Starbucks they are provided with either a hard copy or access to the online Starbucks' Partner Guide and they are required to sign an acknowledgement indicating that they acknowledge that "failure to uphold the policies and expectations set forth in this Partner Guide may result in corrective action, up to and including separation from employment." The acknowledgement also includes the following language: "Starbucks Coffee Company may change its policies, practices and procedures at any time, with or without notice." With respect to "Attendance and Punctuality," the guide states that employees must give as much advance notice as possible if they cannot report to work or will be late and also arrange for a substitute unless the absence is unplanned or the employee will be using sick leave. The guide also provides several "examples" of unacceptable conduct, including "irregular attendance, one or more instances of failing to provide advance notice of an absence or late arrival, or one or

[1] All dates refer to 2023 unless otherwise noted.

[2] Along with Fernandez, Garvey, and Shields, Cole identified 11 other partners who she personally observed engaging in union activity while she was store manager at the Store. (Tr. at 402–411, 424–425, GC Exh. 13 at 10; GC Exh. 26.) Cole testified that the Store employed somewhere between 15–17 employees in total around this time. (Tr. at 418–419.)

more instances of tardiness." The guide also sets forth that such conduct "may result in corrective action, up to and including separation from employment." (R. Exh. 1 at 28; R. Exh. 2.)

Employees clock into work on one of a handful of iPads located in the store. They sign in by typing their partner numbers and pin number. Once opened the app shows when the employee is scheduled that day and when their meal break is scheduled. The employee hits the "Start Shift" button to clock in. Those clock in times are recorded on the employees' time-card statements, which are kept by Respondent. (Tr. at 144, 375.)

Whitney Grubbs was the Store's manager from before the Union was certified through March, when Cole took over the position. It is uncontested that during Grubbs' tenure as store manager, employees arrived late on a regular basis for scheduled shifts without being disciplined. For example, Fernandez arrived more than 3 minutes late a total of 43 times out of 58 shifts from January 1, through the end of March, and she was never disciplined.[3] Another barista, Kevin Davis arrived more than 3 minutes late 32 out of 60 shifts during the same period and never received discipline. Barista Sean Moore was more than 3 minutes late 19 out of 49 shifts during the same period and never received discipline. In fact, it appears that only one employee at the Store received discipline for being late during Grubbs' entire tenure.[4] (GC Exhs. 11–12.)

When Cole took over as the Store's manager in March, she had previously managed two other Starbucks stores, including one located in the Northern Liberties neighborhood of Philadelphia for about 2 years.[5] In April, Cole held a meeting for shift supervisors at the Store during which she announced that she planned on enforcing policies that were not previously enforced. She specifically mentioned that she was going to start enforcing the "Attendance and Punctuality" policy. She also announced that she intended on being so hard on employees with these changes, that they would either quit because of the changes, or they would be fired after she issued enough disciplinary actions.[6] (Tr. at 93–94, 101, 364, 372.)

Cole admitted that she began strictly enforcing the Attendance and Punctuality policy, which she acknowledged had not been previously enforced, in April.[7] (Tr. at 371–372.) As part of that effort, she required employees to sign a new Attendance and Punctuality policy form that had the following language added in bold:

[3] When Cole started enforcing the policy in April, she provided employees with a three-minute grace period. (Tr. at 366, 395.)

[4] There was some testimony that one employee, Nina Crews-Sargent, was issued discipline for attendance issues by Grubbs in December 2022. (Tr. at 91, 113, 372.)

[5] Cole also testified that she had also previously spent about 2 months as Store Manager at the Cotman Busselton Starbucks "drive thru" before becoming manager at the Store. (Tr. at 364.)

[6] This testimony from Ace Hobfell, who was a shift supervisor at the time was uncontested. Hobfell also testified that when Hobfell decided to resign and gave 2 weeks' notice, Cole asked Hobfell if they were leaving because of the changes and Hobfell responded, "No." Although Respondent presented Cole as a witness, Respondent's counsel never asked her about this statement and she never refuted it. (Tr. 93–95.)

[7] It is uncontested that Starbucks has been more strictly enforcing its Attendance and Punctuality policy since April 20, 2023, as Respondent admitted this complaint allegation in its answer. (GC Exh. 1(j) at 10.)

> **Going forward, I understand that Time and Attendance policies will be uniformly enforced. I understand the expectations as outlined in the partner guide policy. I understand that in District 393,[8] irregular attendance is considered 4 or more attendance occurrences (defined as a tardy or missed shift) within a 6-week period. I understand if I have any concerns with the policy of the definition of irregular attendance, I may bring these concerns to my store manager for clarification.** (GC Exh. 20.)

The bolded language was new and was not in the original version of the policy as set forth in the Partner Guide. Cole testified that she had all of the partners in the store sign this version of the policy about a month after she became manager.[9] (Tr. 373.)

Soon thereafter, Cole started periodically going through the employees' time-card statements and writing up employees for being late. Cole testified that even though Respondent's policy did not provide for a grace period, she sua sponte instituted a 3-minute grace period, meaning she did not count lateness of 3 minutes or less against employees when she tallied their late arrival times. On April 26, Cole issued her first disciplinary action for lateness at the Store, when she issued a documented coaching to Kevin Davis for being late eight times between April 7, and April 26, and for calling out once. Late times ranged from 6 minutes to an hour and 39 minutes late. From April through at least January 2024, Cole issued 23 disciplinary actions to partners based on lateness. These disciplinary actions included five issued to Fernandez and four issued to Garvey. Only Fernandez and Garvey accumulated enough of these disciplinary actions to lead to termination. The evidence demonstrates that other partners who received disciplinary actions for lateness either left employment voluntarily or improved their punctuality. (Jt. Exh. 2; GC Exhs. 21–25; GC Exhs. 16–19; Tr. 366, 374–375, 395.)

Lydia Fernandez' Termination

On May 3, Cole gave Fernandez her first discipline, which was a documented coaching for being late 16 times between April 4, and May 3. Late times ranged from 3 minutes to 68 minutes late. (GC Exh. 21.) When Cole provided Fernandez with her discipline Fernandez expressed that she was struggling with waking up in the morning for the opening shift and Cole told her that she would try to schedule Fernandez for fewer opening shifts. Cole also warned Fernandez that she would be terminated quickly if she did not get her time and attendance under control. (Tr. 302–303.)

On June 26, Cole issued Fernandez a written warning for being late seven times between May 1, and June 21. Late times ranged from 4 minutes to 80 minutes late. (GC Exh. 22.) On August 4, Cole issued Fernandez a final written warning for being late six times between July 18, and August 1. Late times ranged from 5 minutes to 49 minutes late. (GC Exh. 23.) On October 26, Cole issued Fernandez another final written warning for being late 22 times between August 29, and October 24. Late times ranged from 4 minutes to an hour and 35 minutes late. (GC Exh. 24.) On December 28, Cole issued Fernandez a notice of separation for being late 13 times

[8] The Store is located in District 393. (Jt. Exh. 1 at para. 11.)

[9] The record shows that Cole had Fernandez sign the new policy on April 10, 2023, and had Garvey sign the policy after she transferred into the Store on July 5, 2023. (GC Exh. 20; GC Exh. 15.)

between October 27, and December 7. Late times ranged from 4 minutes to an hour and 35 minutes late. (GC Exh. 25.)

Sheilds Informs Union of Fernandez' Termination

On January 1, 2024, Sheilds contacted Union Organizers Eli Zastempowski (Zastempowski) and Alex Riccio at the union hall and informed them that Fernandez had been terminated. From May 2022, through September 2024, Zastempowski was the Union servicing agent for the Store. As servicing agent, Zastempowski was the employees' main Union contact when issues arose. Zastempowski was also aware of all bargaining between Respondent and the Union and had been present at contract negotiations. During Zastempowski's tenure as servicing agent for the Store, Respondent was supposed to contact him or the Union's assistant manager of the Philadelphia Joint Board Sandy Minter if there was any issue regarding the employees' terms and conditions of employment. There are no shop stewards at the Store because shop stewards are appointed after the parties have agreed to an initial collective bargaining agreement. (Tr. at 42–50, 54, 149.)

On January 1, 2024, after learning of Fernandez' termination, Zastempowski conducted an investigation into the circumstances surrounding Fernandez' discharge. Prior to Fernandez' termination, Zastempowski was unaware that Respondent had started more strictly enforcing its time and attendance rule. There is no evidence showing that Respondent ever contacted either Zastempowski or Minter about enforcement of the time and attendance policy prior to Cole's decision to start strictly applying the policy. Likewise, Respondent never informed the Union prior to disciplining or terminating Fernandez. Zastempowski filed the initial charge in this case regarding Respondent's more strict enforcement of its Attendance and Punctuality policy and Fernandez' discharge with the Board on February 26, 2024. (Tr. at 48, 56, 58–59, 61–62; GC Exh. 1(a).)

Bria Garvey's Discipline

In June, barista Garvey transferred to the Store from the 12th & Market store which had closed. On July 5, soon after Garvey transferred to the Store, Cole had her sign the Attendance and Punctuality policy that contained the new bolded language. (GC Exh. 15.) On August 4, Cole issued Garvey a written warning for being late 14 times between July 1, and 31, and for violating the dress code by not wearing a proper head covering.[10] Late times ranged from 4 minutes to 15 minutes late. (GC Exh. 16.) On October 31, Cole issued Garvey a second written warning for being late 18 times between August 30, and October 30, and for calling out four times between September 19, and October 30. Late times ranged from 4 minutes to 30 minutes late. (GC Exh. 17.) On December 8, Cole issued Garvey a final written warning for being late six times between November 6, and December 8, and for calling out four times between November 11, and December 5. Late times ranged from four to 30 minutes late. (GC Exh. 18.)

[10] Cole issued a "written warning" as Garvey had previously received "documented coaching" for tardiness from her manager at the 12th and Market store on April 8, 2022. (R. Exh. 5.)

January 23, 2024 "March on the Boss"

On January 23, 2024, Shields and Garvey planned a "March on the Boss" event to address several matters of employee concern. The letter addressed alleged racist enforcement of Respondent's head covering policy; a conversation in which Cole had referred to Garvey as being "aggressive" that employees found to be transphobic, and insufficient store security for the protection of partners. That morning, employees gathered around District Manager Melissa Scott and Garvey read the letter aloud to Scott in front of customers who happened to be present in the store. Cole was not on shift and Scott was the only manager present that day. Once Garvey finished reading the letter, Scott asked that the text of the letter be sent to her and everyone went back to work. (Tr. 128–132; 204–212; GC Exh. 9).

Oleato Mandatory Training

Later that evening, Cole had arranged for a mandatory training to take place in the atrium space just outside of the Store. The training was scheduled to begin at 6:30 p.m., which was after Store hours and the purpose of the meeting was to train the partners on how to make a new Starbuck's drink offering called the Oleato. Cole testified that she also considered the mandatory meeting to be a chance to do a "reset" on Starbucks' policies, and in preparation for that she printed out several policies for the employees to sign. These included the Attendance and Punctuality policy, the cell phone policy, and a solicitation policy. At the beginning of the meeting Cole handed out the three policies and asked employees to sign them. With regard to the solicitation policy, Cole had distributed a handout with the header: "Understanding Solicitation & Distribution Policy, Quick Reference Guide." The handout provided definitions for solicitation and distribution and three questions that needed to be answered in order to determine if the action is permitted or not. Those inquiries were listed as: (1) whether the individual soliciting or distributing is a partner; (2) whether the activity was performed during working or non-working time; and (3) whether the activity took place in a working or nonworking area. A bullet point located at the bottom of the handout sets forth: "Should you become aware of Union solicitation in your workplace, notify your direct leader who will connect with your Partner Resource Business Partner and Labor Relations Manager." (GC Exh. 10.) Most of the employees signed the policies that were being handed out. Shields signed the first two policies as well, but when she read what had been presented by Cole as the solicitation policy, she objected to it telling Cole that the policy was illegal and that Cole should not be distributing it. It is also uncontested that Shields ripped up the policy. Shields testified that when she complained about what she understood as the policy discouraging employees from distributing union pins, Cole responded that the partners were not paid to organize. She also testified that when she told Cole that the handout might violate Federal law, Cole responded that Starbucks policy trumps Federal law.[11] (Tr. at 141–142, 275, 426.)

[11] I credit Shields' testimony with regard to these statements as she provided thoughtful and confident answers and she was careful to be precise about what words she recalled Cole using. Additionally, the fact that Shields continues to work at Starbucks and personally stands to gain nothing from her testimony lends to her credibility. The Board recognizes that testimony from current employees which contradicts statements of their supervisors tends to be particularly reliable as these witnesses are testifying adversely to their pecuniary interests. *Flexsteel Industries, Inc.*, 316 NLRB 745, 745 (1995). Although Cole specifically denied making either of these statements (Tr. at 426), her testimony about the exchange was self-serving, vague, and hedging. For example, on direct examination, when Cole testified about the

Cole admitted that she printed the Solicitation guidance out and presented it to the partners as a policy they were to sign along with the other policies. At some point, she realized that the paper she had printed out was from the Manager Quick Reference Guide and that it was not the solicitation policy intended for employees. There is no evidence that Cole, or anyone from management, ever informed the Store's employees that she had distributed the form by mistake or that they should disregard it. There is also no evidence that Cole ever disciplined any employees based on the solicitation guidance that she asked employees to sign at the meeting. (Tr. at 132–133, 141–142; 418–419, 422–425, 274–276.)

Garvey's Termination

On February 3, 2024, Cole issued a Notice of Separation to Garvey for being late 15 times between December 9, and February 2, 2024, as well as for one call out and one "no show." Late times ranged from 4 minutes to an hour and 30 minutes. (GC Exh. 19.) After being terminated Garvey got on the phone and called her friend to ask for a ride home. It is uncontested that Garvey said to her friend that she "really wanted to smack this bitch," referring to Cole. During the exchange after she was fired it also appears that she said to Cole "Fuck you, you ugly bitch."[12] Cole testified that Garvey told Cole, "Stop talking to me, Bitch," threw her hat behind the bar in the café and banged on the windows after she left the shop. Although Garvey did not deny calling Cole a "bitch," she did deny throwing her hat and banging on the windows after leaving the store. Garvey testified that she was particularly angry because she felt that she had been tricked into staying later than her originally scheduled shift, just in order to be terminated. (Tr. at 218, 276–279, 387–390.)

III. DISCUSSION AND ANALYSIS

Solicitation and Distribution Policy

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by maintaining an Understanding Solicitation and Distribution policy since about January 23, 2024.[13]

The test for evaluating whether an employer's statements or conduct violates Section 8(a)(1) of the Act is whether the statements or conduct have a reasonable tendency to interfere with, restrain, or coerce union or protected activity. *Station Casinos, LLC*, 358 NLRB 1556, 1573 (2012). The Board considers a totality of the circumstances in assessing whether a

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exchange she used hypothetical language in testifying about what she said to Shields: "Sarah said that this is illegal. I can't do this. And then my response *would be*, '(Sigh), Sarah, I'm just doing my job.'" (Tr. at 424, emphasis added). Although it is true that Garvey, who was present at the meeting, did not recall Cole making these statements, she was also 13 minutes late to the meeting and it appears from both Cole and Shields' testimony that Garvey had not yet arrived when the initial back and forth between Shields and Cole took place. (Tr. at 242–425.)

[12] On cross examination, Garvey admitted that she may have called Cole an "ugly bitch," but she did not specifically recall doing so. (Tr. at 276–278.)

[13] Complaint para. 6.

statement or conduct violates the Act and intent is immaterial. *KSM Industries*, 336 NLRB 133, 133 (2001).

It is well established that rules directing employees to engage in surveillance of the protected concerted activities of their fellow employees and to report those activities to the employer violate Section 8(a)(1) of the Act. *Montgomery Ward*, 269 NLRB 598, 600 (1984); see also *Liberty House Nursing Home*, 245 NLRB 1194, 1197 (1979) (statements inviting employees to report coworkers engaged in protected concerted activity violate the Act). Here, it is uncontested that Cole distributed three Starbucks' policies and instructed employees to sign each of the policies. The solicitation policy Cole distributed contained the following language: "Should you become aware of a union solicitation in your workplace, notify your direct leader, who will connect with your Partner Resource Business Partner and Labor Relations Manager."[14] The policy directs employees to report to management any union solicitation activity, which clearly violates Section 8(a)(1) of the Act. Respondent contends that it did not violate the Act when Cole distributed the policy on January 23, because Cole had accidentally printed out and distributed a page from Starbucks' quick reference guide, which is guidance for managers rather than employees. The problem with Starbucks' defense is that Cole's intent is immaterial. *Naomi Knitting Plant*, 328 NLRB 1279, 1280 (1999); *Williamhouse of California, Inc.*, 317 NLRB 699, 713 (1995). Cole's actions were that she presented the unlawful policy to employees at a mandatory meeting and instructed them to sign the policy, which was Starbucks' common practice to remind or inform employees of Starbucks' policies that employees were required to follow. Any employee in that meeting who read and signed the policy would have the impression that they were required to report any union or protected concerted activity to Starbucks' management. The evidence is also clear that neither Cole nor any member of Starbucks' management ever informed employees that the policy had been handed out by mistake, or in any way repudiated the guidance that Cole had distributed and asked employees to sign.

The well-established test to determine whether an employer has adequately repudiated its violation of the Act is set forth in *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). The Board explained in *Amazon.com Servs., LLC*, 373 NLRB No. 40 (Mar. 29, 2024):

> In order for a repudiation to serve as a defense to an unfair labor practice finding, it must be timely, unambiguous, specific in nature to the coercive conduct, and untainted by other unlawful conduct. In addition, there must be adequate publication of the repudiation to the employees involved, and the repudiation must assure employees that, going forward, the employer will not interfere with the exercise of their Section 7 rights. (citing *Lytton Rancheria of California*, 361 NLRB 1350, 1353 (2014), and *Passavant*, 237 NLRB at 138–139).

Respondents provided no evidence that any such repudiation was even attempted. Thus, the employees would certainly be under the impression that the Solicitation and Distribution policy that Cole handed out and asked them to sign was Respondent's policy and that they were obligated to report any union solicitation activity to management.

[14] GC Exh. 10.

In light of all of the above, I find that Respondent violated Section 8(a)(1) of the Act when Cole distributed the Solicitation and Distribution guide and told employees to sign it.

Independent 8(a)(1) Allegations

The General Counsel also alleges that Respondent violated the Act when Cole directed employees not to engage in union activity while on the clock and told employees that Respondent's policies supersede employees Section 7 rights on January 23, 2024.[15]

As set forth above, Shields testified that when she talked to Cole about the solicitation policy, Cole responded that employees "Weren't paid to organize" and that when Shields told Cole that the policy was likely illegal, Cole said "Starbucks' policy trumps federal law."[16] As set forth above, supra at fn.11, I have credited Shields testimony over Cole's regarding these statements. As I find that both of these statements would have the tendency to dissuade employees from engaging in Section 7 rights, I find that both statements violate Section 8(a)(1) of the Act.

First, with regard to Cole's comment that employees were "not paid to organize," employees could take this directive to mean that they could not engage in solicitation or distribution of union materials while they were on the clock and as such the statement did "not clearly convey to employees that they may solicit on breaks, lunch, and before and after work." *Laidlaw Transit Inc.*, 315 NLRB 79, 82 (1994) (finding rule prohibiting solicitation during "company time" is presumptively invalid.); See also *Manor Mechanical Contractors, Inc.*, 357 NLRB 1526 (2011) (statements prohibiting employees from soliciting signatures for a union on "company time" or during "working hours" violates Section 8(a)(1), because it can be interpreted by the employee that they are not permitted to engage in such union activity during breaks or during other nonworking periods).

Second, with regard to Cole's statement that "Starbucks' policy trumps federal law," the statement on its face would have the tendency to restrain employees from participating in protected concerted activity, as employees would be led to believe that the Respondent did not intend to respect Section 7 rights under the NLRA. See *Special Touch Home Care Services, Inc.*, 357 NLRB 4 (2011), enf. denied on other grounds, 708 F.3d 447 (2d Cir. 2013) (when it comes to employee Section 7 rights, the statute trumps company policy and the Respondent cannot rely on its own policy as a defense to restrict otherwise legally protected employee activity).

Independent 8(a)(1) Allegations were Timely Filed

Although Respondent did not contend that these allegations were time-barred in its brief, it generically raised the issue of timeliness in its answer to the complaint. These independent 8(a)(1) statement allegations were first made in the complaint which issued on November 4, 2024, which is more than 6 months after they were made.

[15] Complaint paras. 7(a) and 7(b).
[16] Tr. at 141.

Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." The Board has long held however that untimely allegations may be considered timely if they are legally and factually "closely related" to a timely filed charge. *Redd-I, Inc*., 290 NLRB 1115 (1988), as clarified by *Carney Hospital*, 350 NLRB 627 (2007). To determine if an otherwise untimely allegation is closely related to the timely charge, the Board: (1) considers whether the otherwise untimely allegations involve the same legal theory as the allegations in the timely charge; (2) considers whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the timely charge (i.e., the allegations involve similar conduct, usually during the same time period, and with a similar object); and (3) may look at whether a respondent would raise the same or similar defenses to both the otherwise untimely and timely allegations. *Redd-I, Inc*., 290 NLRB at 118. Respondent has the burden of proving untimeliness. *Midwest Terminals of Toledo*, 365 NLRB 1645, 1659–1660 (2017), enfd. 783 Fed.Appx. 1 (D.C. Cir. 2019); *Phillips 66 Co. & Wayne Michael Terrio*, 373 NLRB No. 1 (2023).

I find that the allegations regarding Cole's statements during the training are not untimely as they are closely related to the first amended charge in case 04–CA–335181, which was filed on June 17, 2024, alleging that Respondent violated Section 8(a)(1) by maintaining an unlawful solicitation policy.[17] First, the allegations here involve the same legal theory as the timely filed charges–that Respondent violated Section 8(a)(1) of the Act by making statements that would deter employees from engaging in protected concerted activity. Second, the allegations involve similar conduct (coercive statements), between the same parties (Cole and the employees working at the Store), during the same period of time (at the January 23, 2024 mandatory training). Finally, Respondent used the same defenses for all of these allegations, namely denying that Cole made any coercive statements whether with regard to the solicitation rule that she distributed or otherwise. Thus, I find that the allegations regarding Cole's coercive statements about solicitation are closely related to the timely filed charge and therefore cannot be barred by Section 10(b) of the Act.

Respondent's Stricter Enforcement of Attendance and Punctuality Rule

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act when it disciplined and terminated employees Fernandez and Garvey by more strictly enforcing its Attendance and Punctuality policy at the Store since around April 20, in response to its employees' union activities. [18]

[17] This charge was amended on October 31, 2024, changing the pertinent language from "enforcement" of the unlawful solicitation policy to "enforcement *and maintenance"* of the unlawful solicitation policy. (GC Exh. 1(c) and 1(g), emphasis added).
[18] Complaint para. 8.

It is unlawful for an employer to enforce rules more strictly in response to union activity. *Dynamics Corp. of America*, 286 NLRB 920, 921 (1987), citing *Keller Mfg. Co.*, 237 NLRB 712, 713 fn. 7 (1978), and *Hudson Oxygen Therapy Sales Co.*, 264 NLRB 61 fn. 2 (1982) (employer unlawfully issued warnings as the result of stricter enforcement of policies in retaliation for employees' support of the union). Where such a violation is found, the Board orders that all discipline issued pursuant to the stricter enforcement be rescinded and expunged. *Dynamics Corp.*, 286 NLRB at 921.

Under *Wright Line*, 251 NLRB 1083 (1980), the General Counsel must prove by a preponderance of the evidence that the new strict enforcement of the rule was made in response to and in retaliation for the employees' support for the Union. The General Counsel may establish an employer's antiunion motivation solely by circumstantial evidence. Such evidence may include, among other circumstances, the employer's knowledge of the union activity, the timing of the employer's action in relation to the union activity, and the employer's other unfair labor practices in response to union activity. If the General Counsel does so, the burden shifts to the employer to show that it would have taken the same action even absent the union activity. See *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6–7 (2023), enfd. mem 2024 WL 2764160 (6th Cir. 2024). See also *Starbucks Corp.*, 374 NLRB No. 10, slip op. at 5, 107 (2024) (applying the *Wright Line* analytical framework to Starbucks' alleged stricter application of work rules at its Buffalo area stores).

With regard to timing, it is uncontested that Cole started strictly enforcing the Respondent's Attendance and Punctuality policy in April, just 10 months after the Union was certified and around the same time that it was actively litigating a series of unfair labor practices filed by the Union against this store. *Starbucks Corp.*, 2023 WL 5140070. It is also uncontested that since the Union's certification, the Store has been extremely active in supporting the Union, with employees participating in national strikes in November 2022, December 2022, March 2023, May 2023, and November 2023, as well as at least one "March on the Boss" event, around the same time period. In fact, Cole specifically testified that she had personally witnessed at least 14 out of 15-17 of the Store's employees, who she identified by name, wearing Union pins and engaging in walk-outs and strikes. (Tr. at 402-411, 424-425.)

With regard to animus, it is uncontested that Cole told the Shift Supervisors that her goal in strictly applying the attendance and punctuality policy was not to improve employee punctuality or customer service, but instead to be so hard on employees, that they would either quit because of the changes or be fired after she had issued enough write ups. This statement reveals that Cole's true intent in more strictly enforcing the Attendance and Punctuality policy was to get rid of employees, most of whom she admittedly perceived as being pro-union, either by voluntary resignations or involuntary terminations.

In addition, Starbucks' history of committing similar unfair labor practices in response to union activity at numerous other stores in Pennsylvania and around the country likewise supports a finding of unlawful motive in this case. See generally *New York Paving*, 371 NLRB No. 139, slip op. at 5 (2022), enfd. per curiam 2023 WL 7544999 (D.C. Cir. 2023). See e.g., *Starbucks Corp.*, 374 NLRB No 10, slip op. at 5-6 (2024) (affirming ALJ's ruling that Starbucks unlawfully enforced its workplace rules and policies in response to employees' union activity); *Starbucks Corp.*, 373 NLRB No. 53, slip op. at 3-4 (2024) (affirming the ALJ's ruling that

Respondent unlawfully threatened and employee with stricter enforcement of work rules due to employees' union activities); *Starbucks, Corp*., 2023 WL 5140070 (2023) (ALJ finding Respondent violated Section 8(a)(3) by more strictly enforcing its dress code policy in retaliation for union activity across multiple stores in Philadelphia, Pennsylvania).

Given the combination of Starbucks' ongoing antiunion campaign, the Store's open and active continued union activity, and Cole's statement that she would be strictly enforcing the attendance policy with the goal of getting rid of employees, I find that the General Counsel has overcome his burden of showing a prima facie case of discriminatory intent.

Respondent contends that Cole's decision to more strictly enforce the Attendance and Punctuality policy was due to safety concerns and the burden lateness places on other partners sharing the shift. (R.'s Br. at 3.) However, Respondent failed to demonstrate why Starbucks was suddenly rampantly enforcing this policy, when none of those conditions were new. See *Starbucks Corp.*, 374 NLRB No. 10, slip op. at 6 (2024) (finding Starbucks purported reason for strictly enforcing work rules was pretextual as the "expectations, standards, and conditions were not new"). Respondent fails to provide a neutral reason for the timing of strict punctuality policy enforcement, such as that it had removed Grubbs from her position as manager because the Store was failing or any evidence that Cole had strictly enforced the Attendance and Punctuality policies in the previous stores she had managed. In fact, as the General Counsel points out, at the time that Cole came in to manage the Store, Grubbs was managing two different stores at the same time, which would tend to show Starbucks' confidence in Grubbs as a manager, rather than the opposite. In light of all of the above, I find that Respondent failed to establish by a preponderance of the evidence that it would have taken the same action with regard to its Attendance and Punctuality policy regardless of its employees' union activity.

Accordingly, I find that Respondents' more strict enforcement of its Attendance and Punctuality rule in response to its employees' union activity, resulting in disciplinary actions including Fernandez and Garvey's terminations violated Section 8(a)(3) and (1) of the Act. See *St. John's Community Services of New Jersey*, 355 NLRB 414 (2010) (decision to enforce a work rule more strictly is unlawful if taken in response to union activity); cf. *Schrock Cabinet Co.*, 339 NLRB 182, 183 (2003).

8(a)(5) Violation

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act when it started to more strictly enforce its Attendance and Punctuality policy at the Store since around April 20, without first notifying and bargaining with the Union, as the employees certified bargaining representative.[19]

It is well established that an employer must provide an elected and certified union notice and an opportunity to bargain before announcing changes in the employees' terms and conditions of employment, *UPS Supply Chain Solutions, Inc.*, 364 NLRB 25 fn. 5 (2016), and that this obligation runs from the date of the election, *Livingston Pipe & Tube, Inc.*, 303 NLRB 873, 878–879 (1991), enfd. 987 F.2d 422, 428 (7th Cir. 1992). It is also well established that an employer's

[19] Complaint para. 9(b).

attendance and punctuality policies are mandatory subjects of bargaining, *Chino Valley Medical Center*, 362 NLRB 283, 285 fn. 1 (2015), enfd. in relevant part 871 F.3d 767 (9th Cir. 2017), and that a change in how strictly an employer enforces a preexisting policy constitutes a change in terms and conditions of employment, *Hyatt Hotels Corp.*, 296 NLRB 259, 263-264 (1989). Finally, it is well established that a union has no duty to request bargaining over a unilateral change that has already been announced to employees as a fait accompli. *Bell Atlantic Corp.*, 336 NLRB 1076, 1087 (2001); and *Roll and Hold Warehouse and Distribution Corp.*, 325 NLRB 41, 42–43 (1997), enfd. 162 F.3d 513 (7th Cir. 1998). See also *NLRB v. Pepsi Cola Bottling Co. of Fayetteville*, 24 A. Appx. 104, 114-115 (4th Cir. 2001).

As discussed above, Cole announced to Respondent's Shift Supervisors that Starbucks would be enforcing the Attendance and Punctuality policy more strictly after the Union had been certified as the employees' collective bargaining representative. Further, the announcement was clearly treated as a fait accompli as Cole immediately started issuing disciplinary actions consistent with this announcement. There is no evidence that Starbucks provided the Union with notice or an opportunity to bargain before Cole did so. Accordingly, I find that Respondent violated Section 8(a)(5) and (1) of the Act when Cole implemented strict enforcement of Starbucks' attendance and punctuality policy without first giving the Union notice and the opportunity to bargain.

Disciplinary Actions also Violated Section 8(a)(5)

As found above, Cole's unilateral announcement that Starbucks' attendance policy would be more strictly enforced violated Section 8(a)(5). Thus, Fernandez's final warning and Fernandez and Garvey's terminations were issued pursuant to those unlawful unilateral actions and violated Section 8(a)(5) of the Act as well.[20] See, e.g., *Starbucks Corp.*, 374 NLRB No. 10, slip op. at 2 n. 6, 188; *Chino Valley Medical Center*, 362 NLRB 283, 285 n. 1 (2015), enfd. in relevant part 871 F.3d 767 (9th Cir. 2017); and *Flambeau Airmold Corp.*, 334 NLRB 165, 166 (2001).

Timeliness of Allegations regarding Respondent's Stricter Enforcement of its Attendance and Punctuality Policy

Although Respondent did not argue that allegations regarding its stricter enforcement of its Attendance and Punctuality policies were time-barred in its brief, it generically raised the issue of timeliness in its answer to the complaint. In light of Respondent's raising the issue however minimally, I will address it here with regard to the stricter enforcement of the

[20] The General Counsel also alleged separately, that Respondent violated Section 8(a)(5) of the Act by issuing discretionary discipline to Respondents employees, including Fernandez's final warning and Fernandez and Garvey's terminations without first notifying and bargaining with the Union over issuing discretionary discipline. The General Counsel concedes that this allegation of the complaint would require retroactively overruling Board precedent, specifically *Care One at New Milford*, 369 NLRB No. 109 (2020). As I have already found that Respondent's disciplinary actions violated Section 8(a)(5) of the Act on different grounds, and as administrative law judges have no authority to overrule Board law, I find no merit to paragraph 9(d) of the complaint and recommend that it be dismissed.

Attendance and Punctuality policy. While it is undisputed that Cole began to more strictly enforce Respondent's Attendance and Punctuality Policy in April 2023, the Union did not file its charge regarding the policy's stricter enforcement until February 6, 2024, which is more than 6 months after the change was instituted.

However, it is firmly established that the 10(b) period commences only when the charging party has clear and unequivocal notice of a violation of the Act. *Leach Corp.*, 312 NLRB 990, 991 (1993). The burden of showing such clear and unequivocal notice is on the party raising the affirmative defense of Section 10(b)." *Chinese American Planning Council*, 307 NLRB 410 (1992). Thus, the 10(b) period would have begun to run when the charging party had actual or constructive notice that the Respondent had started strictly enforcing its policy.

Here, the Respondent failed to carry its burden. First, Respondent has not shown that the Union had actual knowledge of the violation more than 6 months before the filing of the charge. It is uncontested that Respondent never informed Union Representative Zastempowski or any representative of the Union that it was going to start strictly enforcing its policy at the Store. It is also uncontested that Zastempowski only discovered that Respondent had started more strictly enforcing the policy when he started to investigate Fernandez' termination, which he was not made aware of until January 1, 2024. Respondent also failed to show any evidence of constructive knowledge as the Union did not have any shop stewards at the Store, who could even arguably be considered to have authority, either actual or apparent, to act as the Union's agent to receive notice of unilateral changes to unit employees' terms and conditions of employment. See *Coreslab Structures (Tulsa) Inc.*, 372 NLRB No. 31 (2022), citing *Colorado Symphony Assn.*, 366 NLRB No. 122, slip op. at 37 (2018), citing *Brimar Corp.*, 334 NLRB 1035, 1035 fn. 1 (2001) (finding that a union steward's knowledge of a unilateral change could not be imputed to the union because the steward had no role in matters relating to bargaining and the employer had no reason to believe otherwise), and *Catalina Pacific Concrete Co.*, 330 NLRB 144, 144 (1999) (rejecting the employer's Section 10(b) defense in part because the employer did not have a reasonable basis to believe that a union steward had the authority to act as the union's agent with respect to receiving notice of proposed unilateral changes), enfd. 19 Fed. Appx. 683 (9th Cir. 2001).

In light of the above, Respondent failed to prove that the Union had actual or constructive notice of Respondent's more restrictive policy outside of the 10(b) period.

Garvey's Post-Discharge Conduct does not Forfeit her Right to Reinstatement

At hearing, the Respondent contended that Garvey's post discharge conduct was so egregious as to bar Garvey's reinstatement as a remedy.

The Board has recognized that evaluating post-discharge employee conduct which potentially disqualifies an employee from full relief entails a "sympathetic recognition of the fact that it is wholly natural for an employee to react with some vehemence to an unlawful discharge." *Hawaii Tribune Herald*, 356 NLRB 661, 662 (2011), quoting *Trustees of Boston University*, 224 NLRB 1385, 1409 (1976), enfd. 548 F.2d 391 (1st Cir. 1977). It is therefore well settled that in order to obviate the reinstatement and backpay obligations engendered by an unlawful discharge, the employer must demonstrate that the employee's post-discharge conduct

was "so flagrant as to render the employee unfit for further service, or a threat to efficiency in the plant." *Hawaii Tribune Herald*, 356 NLRB at 662, quoting *O'Daniel Oldsmobile*, 179 NLRB 398, 405 (1969). As the Board has noted, denial of reinstatement is appropriate only in "extraordinary situations," such as a death threat, intentionally striking a supervisor with an automobile, and threatening to "report a probation violation in order to influence a witness's testimony during a Board hearing." *Fund for the Public Interest,* 360 NLRB at 877, quoting *Timet*, 251 NLRB 1180, 1180–1181 (1980), enfd.671 F.2d 973 (6th Cir. 1982), and collecting cases.

Although Garvey fully admitted that she said that she really wanted to "smack this bitch" referring to Cole, I do not find that this comment even taken with other alleged actions, such as yelling, throwing her hat and banging on the store windows after exiting, rises to the level the Board has previously found to render an employee unfit for further service. Therefore, I find that Garvey's post discharge actions were not sufficiently flagrant or violent to cut off her reinstatement and backpay.

Starbuck's Affirmative Defenses

Starbucks contends that the complaint should be dismissed in its entirety because Board members and administrative law judges are unconstitutionally insulated from removal. (R. Br. at 21–22.) However, the Board has rejected such defenses. See *Commonwealth Flats Dev. Corp. d/b/a Seaport Hotel Boston*, 373 NLRB No. 142 (2024). Following the Board's approach, I decline Starbucks' invitation to revisit that precedent here and deny Starbucks' challenge to the constitutionality of the agency's structure.

Respondent also contends that the agency's authority violates Article II of the Constitution and the separation of powers, as well as the due process clause of the Fifth Amendment, because Board members may exercise legislative, executive, and judicial powers in the same proceeding. (R.'s Br. at 26.) The Board recently rejected a similar challenge to its authority, explaining that the Supreme Court has held that administrative agencies can, and often do, investigate, prosecute, and adjudicate rights without violating due process. *Jones Lang LaSalle Americas, Inc.*, 373 NLRB No. 37, slip op. at 1 fn. 1 (2024) (citing *Illumina, Inc. v. Fed. Trade Comm'n*, 88 F.4th 1036, 1047 (5th Cir. 2023), which cited *Withrow v. Larkin*, 421 U.S. 35, 47, 56 (1975)). Relying on the Board's analysis, I reject Respondent's argument concerning the Board's authority and the due process clause.

Third, Respondent asserts that the General Counsel seeks remedies in this case (particularly compensatory damages) that violate Respondent's right to a jury trial under the Seventh Amendment. (R.'s Br. at 23.) I find, however, that the remedies that the General Counsel seeks are part of the make-whole remedy that the Board may order under the Act. As the Board explained in *Thryv, Inc.*, "while the Board's make-whole remedy may 'somewhat resemble compensation for private injury' like that imposed in a tort proceeding, the relief that [the Board issues] is nevertheless purely statutory in nature and specifically designed to effectuate the purposes of the Act . . . Accordingly, we find that our amended make-whole remedy is grounded squarely in our statutory authority, and does not implicate the Seventh Amendment." 372 NLRB No. 22, slip op. at 16 (2022) (quoting *Virginia Electric & Power Co. v. NLRB*, 319 U.S. 533, 543 (1943), enf. denied in part on other grounds, 102 F.4th 727 (5th Cir.

2024). Relying on the Board's guidance, I do not find that the remedies the General Counsel seeks in this case implicate the Seventh Amendment.

In so finding, I note that the Supreme Court's decision in *SEC v. Jarkesy* does not undermine the Board's conclusion that the remedies at issue here do not entitle Respondent to a jury trial. In *Jarkesy*, the Supreme Court found that the civil penalties that the Securities Exchange Commission (SEC) sought could only be awarded after a jury trial in an Article III court. *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024). That decision does not apply here because, in contrast to the SEC, the NLRB does not award civil penalties to deter or punish wrongdoers; rather, it awards (where appropriate) make-whole relief solely to restore the status quo that would have existed but for the violation(s) of the Act. Thus, this case may properly proceed in this administrative forum without a jury trial.

With regard to Respondent's contention that Board Members Gwynne Wilcox and David Prouty should recuse themselves based on their past, present, and perceived relationship with the Union and their affiliates, this issue is properly addressed by the Board.

As to Starbucks' remaining affirmative defenses set forth in its answer to the complaint, it produced no testimony or argument on brief to support those remaining affirmative defenses. Therefore, Respondent did not meet its burden in establishing its other affirmative defenses, and I consider them waived.

CONCLUSIONS OF LAW

1. On January 23, 2024, Starbucks announced a new solicitation and distribution policy that instructed employees to notify management if they observed any union solicitation in the workplace in violation of Section 8(a)(1) of the Act.

2. On January 23, 2024, Starbucks directed employees not to engage in union activity while they were on the clock in violation of Section 8(a)(1) of the Act.

3. On January 23, 2024, Starbucks told employees that Starbucks' policies trump federal law in violation of Section 8(a)(1) of the Act.

4. In April 2023, Starbucks announced that the attendance and punctuality policy would be more strictly enforced against the store's employees with respect to tardiness in violation of Section 8(a)(1) of the Act.

5. Starbucks' April 2023 announcement regarding stricter enforcement of the attendance and punctuality policy also violated Section 8(a)(5) of the Act.

6. Starbucks more strictly enforced the attendance policy by issuing disciplinary actions, including terminations, in violation of Section 8(a)(3) and (1) of the Act.

7. The disciplinary actions and terminations pursuant to the strict enforcement of Starbucks' attendance policy also violated Section 8(a)(5) and (1) of the Act.

8. Starbucks did not otherwise violate the Act as alleged in the complaint.

REMEDY

Starbucks will be ordered to cease and desist from the foregoing or any like or related unlawful conduct and take other affirmative action consistent with the Board's standard remedies for such violations.

Specifically, Starbucks will be required to offer Fernandez and Garvey reinstatement to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

In addition, Starbucks will be required to make Fernandez and Garvey whole for any loss of earnings and other benefits suffered as a result of their unlawful terminations. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at a rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022),[21] Starbucks will also be required to compensate Fernandez and Garvey for any other direct or foreseeable pecuniary harms incurred as a result of their terminations. This will include reasonable search-for-work and interim employment expenses, if any, regardless of whether the expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, compounded daily as prescribed in *Kentucky River Medical Center*.

Starbucks will also be required to compensate Fernandez and Garvey for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and shall file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to appropriate calendar years. See *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay allocation report, the Respondent shall file with the Regional Director for Region 4 a copy of Fernandez' and Garvey's corresponding W-2 forms reflecting the backpay award. See *Cascades Containerboard Packaging-Niagra*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

[21] Enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024). The Board's *Thryv* remedy was recently rejected by the Third Circuit in *Starbucks Corp.*, —— F.4th ——, 2024 WL 5231549 (Dec. 27, 2024) (holding that the remedy exceeded the Board's authority under the NLRA), denying enf. in part of 372 NLRB No. 50 (2023), reconsideration denied 372 NLRB No. 102 (2023). However, the Board's *Thryv* decision remains valid precedent under the Board's longstanding policy of nonacquiescence in adverse appellate court decisions. See *Airgas USA, LLC*, 373 NLRB No. 102, slip op. at 1 fn. 2 (2024), and cases cited there explaining the reasons for the policy. And, as previously indicated, administrative law judges must follow and apply Board precedent unless and until it is overturned by the Supreme Court or the Board itself. See, e.g., *Western Cab Co.*, 365 NLRB 761, 761 fn. 4 (2017); and *Pathmark Stores, Inc.*, 342 NLRB 378 fn. 1 (2004).

The General Counsel also request certain nonstandard or "special" remedies, including broad cease and desist language and additional affirmative provisions requiring Starbucks to read the Board's official notice to employees, issue Fernandez and Garvey letters of apology, and scheduling a training session with the NLRB Regional Office regarding employee rights. However, such special remedies do not appear warranted in the circumstances of this case. Compare *Starbucks Corp.*, 374 NLRB No. 10, slip op. at 17 (2024) (granting special remedies), with *Starbucks Corp.*, 374 NLRB No. 9, slip op. at 1 fn. 4 (2024) (denying special remedies).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

ORDER

The Respondent, Starbucks Corp., at 20th & Market Street in Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   (a) Maintaining an Understanding Solicitation and Distribution policy that directs employees to report union solicitation to Respondent.

   (b) Directing employees not to engage in union activity while on the clock.

   (c) Telling employees that Starbucks' policies trump federal law.

   (d) More strictly enforcing workplace rules or policies because of employees' support for the Union.

   (e) Disciplining and discharging employees or otherwise take adverse action against employees because they are engaged in union activities or because they support the Union.

   (f) Failing and refusing to bargain collectively with the Union by more strictly enforcing the Attendance and Punctuality policy or implementing other terms and conditions of employment without affording the Union with notice and an opportunity to bargain.

   (g) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

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

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

(a) publicly repudiate and rescind the overbroad Understanding Solicitation and Distribution policy and ensure that employees are informed that they are not expected to report employee union solicitation activity to management.

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

> All full-time and regular part-time baristas and shift supervisors performing work at Employer's store #008846 located at 1900 Market St., Philadelphia, PA 19103. Excluded: All store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

(c) Rescind all discipline issued pursuant to its stricter enforcement of the Attendance and Punctuality policy at Respondent's store #008846 located at 1900 Market Street, Philadelphia, Pennsylvania 19103, and notify the employees that Respondent has done so and that such disciplines will not be used against them in any way, and (1) offer those employees who were discharged full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed; and (2) make unit employees whole for any loss of earnings and other benefits suffered.

(d) Reinstate Lydia Fernandez and Bria Garvey to their former positions or, if such positions no longer exist, to a substantially equivalent position, without prejudice to their seniority or any rights and privileges previously enjoyed and make them whole for any loss of wages and benefits they may have suffered as a result of their unlawful discharges.

(e) Make employees Lydia Fernandez and Bria Garvey whole for any loss of earnings and other benefits they lost from their unlawful terminations, less any net interim earnings, plus interest and also make Lydia Fernandez and Bria Garvey whole for any direct or indirect or foreseeable pecuniary harms they suffered from their unlawful terminations, including reasonable search-for-work and interim employment expenses, plus interest, and any adverse tax consequences of receiving a lump-sum backpay award.

(f) Remove from all files any reference to Lydia Fernandez' and Bria Garvey's terminations and notify them in writing that this has been done and that their terminations will not be used against them in any way, including, but not limited to, in response to an inquiry from any employer, employment agency, unemployment issuance office, or reference seeker.

(g) Compensate Lydia Fernandez, Bria Garvey, and all other affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order or such additional time as the

Regional Director may allow for good cause shown, a report allocating the backpay award to the appropriate calendar year(s) and a copy of the backpay recipient's corresponding W-2 form reflecting the backpay award.

(h) Preserve and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide a reasonable place designed 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.

(i) Within 14 days after service by the Region, post attached Notice to Employees marked "Appendix" at 1900 Market Street (20th & Market) Store. Copies of the notice, on forms provided by the Regional Director of Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its 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.

(j) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

It is further ordered that the alleged unfair labor practices not found herein are dismissed.

Dated, Washington, D.C., April 29, 2025

Susannah Merritt
Administrative Law Judge

APPENDIX

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

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

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

WE WILL NOT direct you to refrain from engaging in union activity while on the clock.

WE WILL NOT tell you that our policies supersede your rights under the National Labor Relations Act.

WE WILL NOT distribute and maintain an overly broad Understanding & Distribution policy.

YOU HAVE THE RIGHT to discuss wages, hours, and working conditions with coworkers and outside entities, and **WE WILL NOT** do anything to interfere with the exercise of your rights.

WE WILL NOT more strictly enforce rules and policies, including our Attendance and Punctuality policy, in response to union activity.

WE WILL NOT fail or refuse to recognize Workers United affiliated with Service Employees International Union (the Union) as the exclusive collective-bargaining representative of our employees in the following bargaining unit (the Unit):

> All full-time and regular part-time baristas and shift supervisors performing work at the Employer's store #008846 located at 1900 Market Street, Philadelphia, PA 19103; but excluding all store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT discipline you, discharge you, or otherwise discriminate against you because of your union activity or support for the Union.

WE WILL NOT change your terms and conditions of employment by more strictly enforcing our Attendance and Punctuality policy in bargaining units represented by the Union without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you under Section 7 of the Act.

WE WILL rescind the portion of our Solicitation & Distribution policy which requires you to notify us if you become aware of union solicitation.

WE WILL publish and distribute a revised solicitation and distribution policy that (1) does not contain the unlawful policy, or (2) provides a lawfully worded policy.

WE WILL offer Lydia Fernandez and Bria Garvey immediate and full reinstatement to their former positions or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Lydia Fernandez and Bria Garvey whole for any loss of earnings and other benefits they lost because we caused their terminations, less interim earnings, plus interest, and **WE WILL** also make Lydia Fernandez and Bria Garvey whole for any other direct or foreseeable pecuniary harms they suffered because we caused their terminations, including reasonable search-for-work and interim employment expenses, plus interest, and any adverse tax consequences of receiving a lump-sum backpay award.

WE WILL, within 14 days, remove from our files any reference to Lydia Fernandez' and Bria Garvey's terminations caused by us, and notify them in writing that this has been done and that their terminations will not be used against them in any way, including, but not limited to, in response to an inquiry from any employer, employment agency, unemployment insurance office, or reference seeker.

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

WE WILL rescind any discipline we issued pursuant to our stricter enforcement of the Attendance and Punctuality policy at the Employer's store #08864 located at 1900 Market Street, Philadelphia, Pennsylvania 19103, and will notify the employees we have done so and that such disciplines will not be used against them in any way, and **WE WILL** (1) offer those employees who were discharged full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed; and (2) make Unit employees whole for any loss of earnings and other benefits suffered.

STARBUCKS CORP.

(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.nlrb.gov

Wanamaker Building, 100 Penn Square, East, Suite 400, Philadelphia, PA 19007
(215) 597-7601 Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-335181 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 (215) 597-5354.