UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGESVBCNC
WASHINGTON, DC

STARBUCKS CORPORATION,

and Case No. 14–CA–321382

CHICAGO AND MIDWEST REGIONAL JOINT
BOARD OF WORKERS UNITED/SEIU

Abby E. Schneider, Esq.,
for the General Counsel.
Lance A. Bowling, Esq., Harry W. Wellford, Jr. and
Colleen Vetter, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

Christine E. Dibble, Administrative Law Judge. This case was tried, by agreement of the parties, using Zoom video technology on February 26 and March 2, 2024.[1] The Chicago & Midwest Regional Joint Board, Workers United/SEIU (Charging Party/the Union) filed the charge in Case 14–CA–321382 on July 7, with an amended charge in the case filed on November 20. On December 13, the Regional Director of Region 14 (the Region) of the National Labor Relations Board (NLRB/the Board) issued a complaint and notice of hearing. Starbucks Corporation (the Respondent/Starbucks/the company) filed a timely answer to the complaint.

The complaint alleges that the Respondent violated the National Labor Relations Act (NLRA/the Act) when (1) on or about June 21, the Respondent, through Megan Daly (Daly), prohibited employees from posting union literature; (2) on or about June 21 and 28, the Respondent, through Daly and Cesar King (King), more strictly enforced its Solicitation/Distribution Rule against employees who joined, formed, or assisted the Union while allowing nonunion solicitations and distributions; and (3) on or about June 28, the Respondent, through King,

[1] All dates are in 2023 unless otherwise indicated.

threatened employees with discipline if employees engaged in union and, or protected concerted activities.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following[3]

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Washington State corporation with offices and places of business throughout the United States, engages in the operation of public restaurants selling food and beverages, including at its place of business at 10015 Gravois Road, Affton, Missouri (Affton store). During the 12-month period ending November 30, the Respondent derived gross revenues of more than $500,000. During the 12-month period ending November 30, the Respondent, in conducting its operations, purchased and received at its Affton store goods valued more than $50,000 directly from points outside the State of Missouri. The Respondent admits, and I find, that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. Stipulations

During the hearing, the following stipulations between the parties were entered into the record:

Subpoena Duces Tecum Para. Nos. 1-4:

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[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for the General Counsel's exhibit; "R. Exh." for the Respondent's exhibit; "Jt. Exh." for Joint Exhibit; "GC Br." for the General Counsel's brief; and "R. Br." for the Respondent's brief.

[3] The findings and conclusions are based on my review and consideration of the entire record not just those cited in this decision, and the demeanor of the witnesses. I have also considered the relevant factors in making my credibility findings which includes: "the weight of the respective evidence, established or admitted facts, inherent probabilities, and 'reasonable inferences that may be drawn from the record as a whole.'" See, e.g., *Daikichi Corp*., 335 NLRB 622, 623 (2001), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1465 (9th Cir.), cert. denied 522 U.S. 948 (1997).

1. For the period June 20, 2023, to October 1, 2023, Marcus Rainford (Rainford) was employed by Starbucks Corporation (Respondent) as Regional Director of Operations for the region including Respondent's 10015 Gravois Road, Affton, Missouri Store (the Affton Store). For the duration of such period, Rainford has been a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

2. For the period July 18, 2022, through November 26, 2023, Daly was employed by the Respondent as district manager for the district including the Respondent's Affton Store. For the duration of such period, Daly was a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

3. Since at least March 14, 2022, through present, King has been employed by the Respondent as store manager at Respondent's Affton Store. For the duration of such period, King has been a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

Subpoena Duces Tecum Para. No. 6:

The petition in 14–RC–320308 was filed on June 21, 2023, and received by the Respondent that same date. Pursuant to a Stipulated Election Agreement, a secret ballot election was held in the café of the Respondent's Affton Store on August 2, 2023, and a ballot count was held that same date. The Certification of Representative issued on August 14, 2023, naming Chicago and Midwest Regional Joint Board, Workers United/SEIU as the exclusive collective-bargaining representative of the following bargaining unit:

> **Unit:** All full-time and regular part-time hourly Baristas and Shift Supervisors employed by the Employer at the Employer's Store at 10015 Gravois Road, Affton, MO 63123, but EXCLUDING all Store Managers, Assistant Store Managers, Office Clericals, Guards, Professional Employees, and Supervisors as defined by the Act.

(Jt. Exh. 1.) The parties agreed to additional stipulations identified at Joint Exhibit 2 which consists of, among other items, subpoenas and motions related to those subpoenas.

II. Alleged Unfair Labor Practices

A. Respondent's Store Operations and Management Team

The Respondent operates retail locations throughout the United States where it sells food, beverages, and store branded items. In addition to store manager (SM)

King, the Respondent employed at its Affton store Shift Supervisor Emily Daugherty (Daugherty).[4] Since October 2021, Daugherty has worked at the Affton store where she started as a barista and later promoted to a shift supervisor in May 2022. In her role as the shift lead, Daugherty is responsible for closing the store, accounting for the retail cash at the end of business, make barista "station" assignments, and manage the store in the SM absence. (Tr. 93.) In October 2023, she voluntarily resigned from the shift supervisor position because the workload was too demanding since she had a second job and was also attending school. Daugherty previously worked at the Respondent's Mehlville, Missouri store from April 2019 to January 2020. During at least part of the relevant period, James Kramer (Kramer) was also an ASM at the Affton store. From 2020 to 2022, Marilyn Clements (Clements) worked as a barista at the Affton store where she was promoted to a shift lead position in July 2023.[5] As an ASM, Clements performed the same job functions as Daugherty did in that position.

The Affton store[6] is a retail area with seating where customers can purchase beverages, food, and other merchandise. There is a swinging door leading to the back of the house (BOH) where inventory and chemicals are stored. The BOH also contains a freezer, a double-door refrigerator with a black basket hanging from its side where employees hang their drinks, and a refrigerator dedicated to milk storage. Additionally, there is also a desk with a chair and shelving behind the desk but no other space for seating. (Tr. 194.) Customers cannot see the BOH from the cafe area. There was conflicting testimony on whether employees took their breaks in the BOH or the café area. Regardless, the evidence is undisputed that employees frequently go to the BOH during their shift to access inventory that they need to use throughout their day or place their personal drinks on the double-door refrigerator.

B. Unionization Effort

On or about June 21, the Union released an announcement that the employees at the Affton store had filed a representation petition. (GC Exh. 3.) The Union advertised the announcement via tweet. The tweet included attachments: "We're Voting Ye!" flyer and "Dear Laxman" letter. The flyer depicted selfies of fifteen Affton store employees with the Starbucks Workers United logo and the phrase "We're Voting Yes!" The Dear Laxman letter was written to explain the employees' intent to unionize the Affton store and included 17 signatories. (GC

[4] The terms "shift lead" and "shift supervisor" are used interchangeably by the Respondent and its staff.

[5] Clements left her employment with Starbucks for about a year and returned in 2023. In September 2023, she transferred from the Affton store to the Butler Hill store.

[6] The Respondent and its staff also refer to their stores as "cafes" and employees as "partners."

Exhs. 2, 3, 4.) The letter was sent to Laxman Narasimhan who at the time was the Respondent's CEO.[7]

As part of the union campaign, employees at the Affton store were recruited to join the effort. In April or May 2023, Daugherty was approached by a couple of baristas asking if she was interested in the unionization campaign and becoming an organizing committee member. She agreed and became involved in the campaign prior to the petition being filed. In her organizing role, Daugherty answered employees' questions about unionization and gathered ballot signatures. She was working at the Affton store when the Union filed a representation petition to represent the employees. Moreover, Daugherty was a signatory to the Dear Laxman letter. The local newspaper, Riverfront Times, also featured an article about the Affton store's employees' unionization activities with quotes from Daugherty on the reasons for their efforts to form a union. Additionally, Daugherty submitted a picture of herself with her cat to include on the We're Voting Yes! flyer. (GC Exhs. 3, 4, 4(b).) Likewise, Clements was aware of the Union filing a representation petition. During Clements 1st week back at the Affton store, Daugherty approached her about joining the union organizing committee. Clements authorized her name to be published as part of the Dear Laxman letter and provided a picture of herself in a green sweatshirt with long dark hair to appear on the We're Voting Yes! flyer.

C. Respondent's Solicitation/Distribution Policy

The Respondent admits that since at least June 1, starting at page 57, its Partner Resources Manuel includes a Solicitation/Distribution policy which governs employees' conduct that reads in part,

> **Soliciting / Distributing Notices**
>
> **Distributing Notices**
>
> Partners are prohibited from distributing or posting in any work areas any printed materials such as notices, posters, or leaflets. Partners are further prohibited from soliciting other partners or non-partners in stores or Company premises during working time or the working time of the partner being solicited. The only exception that may apply to this policy is when a partner is engaged in distribution or solicitation related to a Starbucks-sponsored event.

(GC Exhs.1(G), 9.) In the BOH, employees and management post information for employees. Information for employees that is initiated by management or employees is posted on the side of the double-door refrigerator, the freezer, and, or

[7] In 2024, Brian Niccol replaced Laxman Narasimhan as the Respondent's chairman and CEO. www.starbucks.com.

the dairy refrigerator. The Respondent's "Store Operational Manual" (SOM) lists the types of information approved for posting in the BOH area, including but not limited to, "legally required notices, Starbucks-sponsored events, weekly partner schedules, and communications from the store manager and above." (GC Exhs. 1, 9.)

D. June 21, Prohibition on and Removal of Union Posting

On June 21, the Union tweeted, "ANOTHER ONE! Gravois & Rock Hill has filed their petition to unionize" and included the Dear Laxman letter and "We're Voting Yes!" flyer. (GC Exhs. 2, 3.) As part of the unionization effort, on or about June 21, the "We're Voting Yes!" flyer was posted to the double-door refrigerator in the Respondent's BOH. On June 21, Daugherty was working as the shift supervisor and keyholder[8] from 12:30 p.m. to 8 p.m. when DM Daly and Regional Director for Operations (RDO) Rainford came to the Affton store about 3 p.m. or 4 p.m. to introduce Rainford to the employees. According to Daugherty, King, and ASM James Kramer (Kramer) worked with her on June 21. However, King testified that June 21 was not a workday for him, but he did go to the store to meet RDO Rainford for the first time. According to King, DM Daly called to tell him that her and Rainford's plans had changed, and they were not coming to the store. (Tr. 195.) Consequently, King testified that he did not see them at the store. Even assuming as true, that King did not see Daly and Rainford when he came to the Affton store, I credit Daugherty's testimony that Daly and Rainford came to the store on June 21. The evidence shows on June 21, that Daugherty worked the 12:20 p.m. to 8 p.m. shift and was responsible for closing the store. The work schedule corroborates her testimony on this point. (GC Exh. 10.) The evidence corroborates Daugherty's testimony that Kramer also worked with her on June 21. (GC Exh. 10; Tr. 167.) The work schedule supports King's testimony that he was not scheduled to work June 21. Since he was not scheduled to work, it is reasonable to assume that he did not remain at the café until closing, unlike Daugherty. Consequently, King would not know if DM Daly and RDO Rainford changed their plans and came to the Affton store to meet employees. The best evidence to refute Daugherty's testimony on this point would have been Daly and, or Rainford. However, the Respondent did not choose to call either to rebut this testimony and offered no explanation for why Daly or Rainford could not have appeared at trial. I find that Daugherty was a credible witness and nothing about her testimony gave me a reason to question her veracity on this point.

While Daly and Rainford were in the BOH, Daly introduced Daugherty to Rainford. Daugherty greeted Rainford and because Clements was under review for promotion to a shift supervisor position, Daugherty mentioned to him that Clements was a great candidate for promotion. After this brief exchange with

[8] The term "keyholder" denotes the person responsible for closing the store at the end of the day and performing the tasks associated with closing.

Rainford, Daly pulled Daugherty aside, pointed to the "We're Voting Yes!" poster and told her "we need to take it down immediately, that [Daugherty] should know the store protocols" on posting information in the store, and "nothing could be hung there." (Tr. 112.) Daugherty removed the flyer immediately. Daly thanked her and told her to spread the message to other shift leads to take down all postings that do not "involve the store" or store protocols. Clements was within 6 to 10 feet of Daly and Daugherty and heard the conversation. (Tr. 113–114, 168.) Daugherty noted that after she removed the "We're Voting Yes!" poster someone re-posted it. (Tr. 114.) Clements corroborated Daugherty's testimony about Daly instructing Daugherty to remove the "We're Voting Yes!" flyer. I find Daugherty and Clements credible on this point. Moreover, I credit Daugherty's and Clements' testimony that Daly told Daugherty to remove the union campaign poster and Daugherty complied immediately. Neither Daly nor Rainford were called by the Respondent to refute their testimony. I noted earlier that because there is no evidence that King remained in the café for the entire day, he would not have known if Daly and Rainford came to the café after he left.

E. Discriminatory Enforcement of the Solicitation/Distribution Rule

As noted above, the Respondent's Solicitation/Distribution rule prohibits posting materials in work areas unless it is approved Starbucks-sponsored events; and the SOM limits postings to, "legally required notices, Starbucks-sponsored events, weekly partner schedules, and communications from the store manager and above." (GC Exhs. 1, 9.) King is familiar with the Respondent's solicitation rules and policies on posting items in the BOH. (Tr. 193.) Moreover, he denies that the Respondent disparately enforces the Solicitation/Distribution rule. King notes that his daily routine includes inspecting the retail and BOH areas to monitor store activity and see "if there's anything that I may have missed." (Tr. 191.) King denied seeing any postings in the BOH that were not in compliance with the Respondent's rules and policies on solicitation and distribution. Specifically, King disputed seeing the flyer in the BOH from an employee soliciting boxes for a personal move or an employee posting that offered to donate clothes to interested parties. Moreover, King asserted that he did not observe nor distribute in the BOH an article about Trader Joe's unionization. King insisted that he has uniformly enforced the Solicitation/Distribution policy since managing the store and employees are not allowed to post nonwork-related documents in the BOH or anywhere else within the store. King acknowledged that he removes postings that have been put up in violation of the Respondent's Solicitation/Distribution policy and reminds employees of the Respondent's rules and policies on unauthorized posting in the store.

Daugherty and Clements testified that management allowed nonwork related posters, flyers, and other information to be posted in the BOH while prohibiting information in support of the Union. Daugherty saw other postings on the BOH double-door refrigerator about employees requesting to swap and/ or cover shifts,

employees needing moving boxes for personal moves. (GC Exh. 6; Tr. 117.) According to Daugherty the Respondent allowed nonwork items to be posted on the refrigerator. She insisted that Daly had to be aware of the nonwork related postings because in June or July Daly went to the BOH at least once each time she visited the Affton store, which she did about once a week in June and July. In August Daly came to the Affton store more frequently because she wanted to ensure that the café's merchandise was arranged to meet the new corporate standards. (Tr. 120–121.) During the same period King was in the Affton store about 4 to 5 days a week and each time "frequently" went to the BOH. During these visits, Daly and King never told Daugherty to take down the flyer soliciting moving boxes that was posted by the employee Dana [last name unknown]. (GC Exh. 6.) Prior to June 21, neither Daly or King had ever instructed her to take down flyers posted in the BOH. The flyers promoting clothes swaps, and an offer from a barista to donate clothes to interested parties remained posted in the BOH for about a week and Daugherty was never told to remove them. Likewise, a letter to employees posted on the double-door refrigerator in the BOH of the Affton store asking them to vote no in the upcoming union elections stayed there for "at least two weeks" in July 2023 without management mandating that it be removed. (GC Exh. 8; Tr. 125.) Likewise, the article about the Trader Joe's employees unionizing was posted in the BOH and stayed there through the election. Daugherty was not told by management to remove it. Aside from the union flyers and the Trader Joe's article, many of the other postings related to shift coverage and other work-related issues.

Clements also testified to observing nonwork-related postings in the BOH that management did not remove, including a flyer urging employees to vote no in the upcoming union elections and a message from management arguing against the unionization effort. (Tr. 176–179; GC Exhs. 7, 8.) Clements corroborated Daugherty's testimony that an employee posted a request for boxes because she was moving and the posting remained up for about a week without management demanding its removal. (Tr. 175–176.) Clements testified that she also heard King tell shift supervisor Riley Kemper (Kemper) that if the "We're Voting Yes!" flyer was reposted that he needed to remove it. (Tr. 180.) Except for the "We're Voting Yes!" flyer, neither Daly nor King ever told her to take down any poster. The "We're Voting Yes!" flyer was posted in the BOH about a week before the union vote and stayed up until the day after the vote.

I find Daugherty and Clements testimony credible about the nonwork-related posting that they observed in the BOH in June to August; and there is no substantive evidence to refute their testimony on postings of nonwork-related information in the BOH without management directing their removal. Daugherty noted that prior to the union campaign, she had never been aware of nonwork-related postings on the BOH refrigerators being removed by management. Moreover, I do not find King credible. In his position as the Affton store SM, King admits that he is frequently in the store's retail and BOH areas overseeing daily

operations. Consequently, it would strain credulity to believe that he did not see information that the evidence established employees posted in the BOH. For the same reasons I find that Daly, as the DM, observed items employees posted in the back area both before and after the union petition was filed. Moreover, neither King nor Daly disputed Daugherty's and Clements' testimony that management removed items that were posted in the backroom area about the Union. The evidence establishes that since the union petition was filed, union related messages on the BOH refrigerators have been quickly removed by store management.

F. June 28 Threats to Employees for Union Support

King claims that he first saw the "We're Voting Yes!" flyer on June 22 when he went into work and saw it was posted simultaneously on the double-door refrigerator, the dairy refrigerator, and the freezer in the BOH. He called his DM (presumably Daly) to report the posting and after speaking with her, he removed the "We're Voting Yes!" flyers and threw them away. Later, the same day King told the employees that the Respondent's policy requires removal of postings that are not preapproved. When King returned to work on his next scheduled work day he saw the flyers had been reposted in the BOH on the same appliances but also included three to four flyers on the desk. Again, King threw the flyers away and reiterated to the employees that if the flyers reappeared, the employees must remove and dispose of them. King testified that the flyers reappeared on Sunday and Monday and each time he threw them away. Thereafter, the flyers did not reappear. King denied threatening employees with disciplinary action if they did not take down the "We're Voting Yes!" flyers. (Tr. 202–203.) However, on Thursday of the same week, he had a meeting with his shift supervisors and addressed the flyers.

On June 28, Clements worked from 6 a.m. to 1 p.m. as a barista. King was the key holder that day. At some point Clement and King were together in the BOH. She was in the BOH on break preparing for her final interview for the shift supervisor position when King asked how she felt about the interview for promotion that she had scheduled with Daly. She responded she felt "prepared" and he responded, "as shift supervisors, he has to hold us responsible, and if the shift supervisor on duty isn't taking down the We Are Voting Yes poster and if he figures out who is hanging the We Are Voting Yes poster, there could be severe consequences" (Tr. 173.) Clements interpreted King's comment as a threat to her that if discovered she was responsible for the posters that he would derail her chances of being promoted to shift supervisor. Soon after, Clement got on a group chat that was created with the signatories to the Dear Laxman letter and told them about the conversation with King. She corroborated King's testimony that the We're Voting Yes! flyer was not reposted after their talk but denies that she was the poster. Ultimately, Clements was promoted by King to the shift supervisor position

in 2023. Moreover, she voted in the August 2, union election. After the election she was promoted to ASM.

III. Analysis

A. June 21 Prohibition on Posting Union Literature

The General Counsel alleges that on June 21, through Daly, the Respondent told employees to stop posting union material in the BOH or anywhere else in the Affton store but allowed other postings unrelated to work and the Union. The Respondent counters that (1) the allegation amounts to "serial litigation" because it has been litigated in NLRB Case 28–CA–289622; and (2) even assumig the allegation is not "serial litigation," the law allows employers to evenhandedly restrict employees from soliciting or distributing on worktime. (R. Br. 9–10.)

The Board has consistently held that, "there is no statutory right of employees or a union to use an employer's bulletin board." *Honeywell, Inc.*, 262 NLRB 1402 (1982), quoting *Container Corp. of America*, 244 NLRB 318 fn. 2 (1979). Nonetheless, if an employer allows its employees to post on its bulletin boards nonwork-related items, it cannot legally disallow employees from also posting union literature. See also *Axelson, Inc.*, 257 NLRB 576, 579 (1981); *Continental Kitchen Corp.*, 246 NLRB 611, 613 (1979); *Vincent's Steak House, Inc.*, 216 NLRB 647 (1975). An employer's motivation for discriminatorily applying its solicitation and distribution policy is irrelevant. *Arkansas-Best Freight System, Inc.*, 257 NLRB 420 (1981).

Based on the evidence, I find that Daly telling employees to stop posting union materials and subsequently, removing union postings was unlawful. The General Counsel, through Daugherty and Clements, provided undisputed evidence that before the union campaign started, employees were allowed to post various nonwork-related items on the refrigerators in the BOH. Nonwork-related postings included an employee's flyer asking for boxes because she was moving, information from management telling employees why voting to unionize would be counter-productive, and an article opining on the negative consequences of Trader Joe's unionization effort. There is no evidence that management removed these postings or instructed the employees not to post them. The evidence is undisputed that Daly told Daugherty to remove the "We're Voting Yes!" flyer and Daugherty immediately complied. Based on the totality of these circumstances, I find that the removal of the union postings was discriminatory and unlawful. *Benteler Industries*, 323 NLRB 712, 714 (1997) (finding employer violated the Act when it refused employees' requests to post union-sponsored literature on bulletin boards while permitting other employees to post personal, nonwork-related notices), enf. mem. 149 F.3d 1184 (6th Cir. 1998); *Saint Vincent's Hospital*, 265 NLRB 38, 40 (1982) (prohibiting

distribution of union information while permitting personal solicitations), enfd. in relevant part 729 F.2d 730 (11th Cir. 1984).

King also acknowledged that on June 22, he saw the "We're Voting Yes!" flyer posted to each of the three refrigerators in the BOH and called the DM to report it.[9] After speaking with the DM, King admitted that he removed and threw the flyers in the trash. On the same day, he told employees that the Respondent's policy requires removal of postings that have not been preapproved by management. (Tr. 196–198.) Although King denied ever seeing nonwork-related postings in the store, I previously found it highly unlikely that Kind or Daly never noticed nonunion, nonwork-related items posted by employees prior to or after the union petition being filed. They allowed these postings to remain up despite the Respondent's solicitation and distribution policy while removing all union related items posted by the employees.

I also find the Respondent's argument unpersuasive that the current charge amounts to serial litigation. The Respondent argues that the complaint is a "veiled effort to relitigate" the Respondent's nondistribution rules in violation of *Jefferson Chemical Co., Inc*., 200 NLRB 992 (1972), and its progeny. (R. Br. 9.) However, *Jefferson Chemical Co.* involved a specific set of facts that are not present in the current case. In *Jefferson Chemical Co.,* the case involved the same parties, the same charge, and an assurance by counsel for the General Counsel to the administrative law judge that the GC was not attempting to expand the complaint. The gravamen of the complaint was a broad "refusal to bargain collectively" charge which is not at issue in the present matter. Although this case involves the same parties, in that the Respondent and arguably the Union are the same, the fact pattern is different. This case involves a different store and discriminates who are in a geographic location apart from that in NLRB Case 28–CA–289622. Since the Respondent's stores are managed independently of each other, the local management structure and employees are different in each store. Therefore, the discriminates in this matter are the employees in the Affton store that have been subjected to local management's unique enforcement of the no Solicitation/Distribution rule. Simply because the General Counsel litigated a charge alleging the Respondent's store in the NLRB's Region 28 violated the Act in its enforcement of the Solicitation/Distribution rule does not preclude it from litigating a charge of disparate enforcement of the same rule at any of the Respondent's other 22,000-plus store. The Board specifically rejects this argument and agrees with the principle that "the General Counsel should not be required to be aware of each and every fact giving rise to a possible unfair labor practice prior to the issuance of a complaint since its investigation is normally limited to the allegations set forth in the charge." *Jefferson Chemical Co*. at 995 ftn.3.

[9] The General Counsel argues that it is unlikely that King saw the "We're Voting Yes!" flyer posted simultaneously on the three refrigerators in the BOH. (GC Br.

Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 6 of the complaint.

B. Disparate Enforcement of the Solicitation/Distribution Policy

The General Counsel alleges that on June 21 and 28, Daly and King respectively, enforced the Solicitation/Distribution policy more strictly against union and nonwork-related postings as opposed to other postings. Specifically, the General Counsel argues the Respondent disparately enforced its policy when on June 21, Daly demanded that Daugherty remove and throw away the "We're Voting Yes!" flyer posted in the BOH and "spread the word" that the flyers should be removed; and when King told Clements to remove the "We're Voting Yes!" flyer which had been reposted. The General Counsel argues that the Respondent's actions are selectively and disparately applied because "before, between, and after June 21 and 28, 2023, postings not having to do with union organizing, as well as *anti*-union postings, were hung in the back of the house without issue." (GC Exh. 22.) The General Counsel noted that postings in support of the union were prohibited and removed. Moreover, the General Counsel's witnesses gave unrebutted testimony that they saw prohibited information posted in the BOH that management did not instruct employees to remove and destroy. Lastly, the General Counsel argues that the Respondent's assertion, through King, that it was unaware of prohibited information being posted in BOH is not credible.

The Respondent counters that the record shows it did not disparately enforce its Solicitation/Distribution policy because (1) barring discriminatory enforcement, the Act allows an employer to prohibit solicitation and distribution on nonwork time and in nonwork areas; and (2) the General Counsel's evidence of disparate enforcement is unpersuasive because the nonwork-related postings are "insufficient to nullify Respondent's BOH policy . . ." (GC Br. 15.) I disagree.

The Respondent cites several Board cases to support the first prong of its argument. See *Brockton Hosp*., 333 NLRB 1367, 1375 (2001); *Golub Corp*., 338 NLRB 515 (2002); *N.Y.N.Y. Hotel & Casino*, 334 NLRB 762 (2001); *Plastics Prods*, 313 NLRB 462, 463 (1993). Each case holds to a degree that the Respondent cannot prohibit employees from distributing materials or soliciting support in the quest to exercise their Section 7 rights if the solicitation and/or distribution occur during nonworking hours and in nonworking areas. The Respondent may restrict the act of solicitation and distribution of the flyers during work hours and in work areas. However, there is a balancing test in weighing the employer's property interests against the employees' right to exercise rights given to them under the Act. See *Eastex, Inc. v. NLRB*, 98 S.Ct. 2505, 2516–2517 (1978). For example, in *Brockton Hospital* and *Golub Corp*., the Board found that the employer violated the Act when it prohibited employees from exercising their Section 7 rights on the employer's

property by soliciting and distributing union material. The Board held that the employees' right to exercise their Section 7 rights outweighed the employer's property interests. More specifically, in *Brockton Hospital* the Board found that the employees were soliciting support and distributing material implicating their terms and conditions of employment. Moreover, the Board found that while the area where the activity occurred was on the employer's property, it was not in an area where the primary purpose of the employer's business occurred and did not impede the employer's ability to care for patients or perform its other core functions.

Similarly, the "We're Voting Yes!" flyers concern Section 7 rights and the exercise of those rights occurred in an area that is ancillary to the Respondent's main function of a retail operation selling food, beverages, and merchandise to the public. Although the General Counsel witnesses and the Respondent witness disagreed on whether the employees used the BOH as a storage area or employee breakroom, the overall evidence convinces me that it was used for both purposes. Regardless, the evidence established that customers were not allowed in the BOH. In fact, the BOH was not even visible to anyone from the café area. There was no testimony or other evidence that the union postings impeded in any way the Respondent's core function of servicing customers. Second, there is no evidence that the "We're Voting Yes!" flyers were posted during work hours. Neither the General Counsel's witnesses nor the Respondent's witness could testify to whether the information was posted in the BOH during working hours or nonworking hours. Therefore, the Respondent cannot prohibit their distribution under the Act because the solicitation and/or distribution occured during nonworking hours and in nonworking areas.

Daugherty and Clements gave unrebutted testimony that they observed nonwork-related and anti-union postings in the BOH before, during and after the union election which were not removed by management. I previously found that given the evidence Daly and King were aware of those postings. Daly did not testify to rebut the implication and testimony that the frequency of Daly's visits to the Affton store and its BOH supports a finding that she was aware of the nonwork-related postings and did not order them removed unlike her directives to take down flyers supporting the Union. Moreover, King acknowledged that as the SM he frequented the store's BOH where the nonwork-related postings and antiunion postings were prominently displayed in the small space. Likewise, I found that he was or at least should have been aware of the nonwork-related and antiunion postings. Based on the evidence, I find that the Respondent did disparately and more stringently enforce its Solicitation/Distribution policy.

Accordingly, I find that the Respondent violated paragraph 7 of the complaint.

C. Threatened Employees for Engaging in Union/Protected Activities

The General Counsel argues that on June 28, King threatened employees with discipline, including Clements, when he told her that if shift supervisors are not removing the pro-union flyers and he discovers who is posting them, there could be severe consequences. The Respondent denies that King threatened employees and Clements. I agree. In fact, the evidence shows that King promoted Clements to a shift supervisor position before the union vote. Moreover, Clements acknowledge that she was able to vote in the August 2 union election with no evidence of interference from King, Daly, or any other supervisor or agent of the Respondent. Even assuming the statement attributed to King by Clements is true, it does not rise to the level of a threat in violation of Section 8(a)(1) of the Act. A single remark addressing a general hypothetical situation does not support a finding that the remark violated employees' section 7 rights.

Accordingly, I recommend that paragraph 8 of the complaint be dismissed.

CONCLUSIONS OF LAW

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

2. The Union, Chicago and Midwest Regional Joint Board, Workers United, Service Employees International Union, is labor organization within the meaning of Section 2(5) of the Act.

3. By prohibiting employees from engaging in union activity by telling employees to stop posting prounion materials while allowing employees to post items not related to the union or work, the Respondent has violated Section 8(a)(1) of the Act.

4. By selectively and disparately applying its Solicitation/Distribution rule against employees who formed, joined, or assisted the Union, the Respondent has violated Section 8(a)(1) and (3) of the Act.

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

6. The Respondent has not violated the Act except as set forth above.

REMEDY

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

The Respondent will be ordered not to prohibit employees from posting materials regarding the Union while allowing employees to post items not related to the Union.

The Respondent will be ordered not to selectively and disparately apply its Solicitation/Distribution rule against employees who formed, joined, or assisted the Union.

The Respondent will also be ordered to post and communicate by electronic post to employees the attached Appendix and notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Starbucks Corporation, headquartered in Washington State but with an office and place of business at10015 Gravois Road, Affton, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from posting notes supporting the Union while allowing employees to post items not related to the Union.

(b) Selectively and disparately apply its Solicitation/Distribution rule against employees who form, join, or assist the Union.

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

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

(a) Within 14 days after service by the Region, post at its store at 10015 Gravois Road, Affton, Missouri, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members 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 customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 21, 2023.

(f) Within 21 days after service by the Region, file with the Regional Director 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, September 2, 2025

Christine E. Dibble (CED)
Administrative Law Judge

11 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."

APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT prohibit employees from posting materials supporting the Union while allowing employees to post items not related to the Union or otherwise discriminate against any employee for supporting the Chicago and Midwest Regional Joint Board, Workers United/SEIU or any other union.

WE WILL NOT disparately and selectively enforce Starbucks Solicitation/Distribution rule against employees who form, join, or assist the Union while permitting the posting of nonunion or antiunion material.

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

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

STARBUCKS CORPORATION
(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.

1222 Spruce Street, Suite 8.302
St. Louis, Missouri 63103-2829
Telephone: (314) 539-7770
Fax: (314) 539-7794
Hours of Operation: 8:30 a.m. to 5:00 p.m. CST

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 14-CA-321382 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 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, (314) 539-7770.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.