

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE**

**STARBUCKS CORPORATION**

**and**

**Cases 19-CA-325519  
19-CA-326902<sup>1</sup>**

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

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for the Charging Party

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for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

JOHN T. GIANNOPOULOS, Administrative Law Judge. This case was tried before me in Portland, Oregon, on February, 19–21, 2024, based upon charges filed by Workers United Labor Union International, affiliated with Service Employees International Union (Workers United or Union), and an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) alleging that Starbucks Corporation (Starbucks or Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act). Specifically, the Complaint alleges that during a union drive by employees at Starbucks store #9611, located in Salem, Oregon, Respondent violated Section 8(a)(1) of the Act in July 2023 by soliciting employee grievances, and by firing the store manager for refusing to commit unfair labor practices. As set forth below, the evidence shows that Starbucks unlawfully solicited grievances as alleged, but the company showed it would have fired the store manager notwithstanding his protected conduct.

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<sup>1</sup> The transcripts are corrected to include Case Number 19-CA-326902.

Based upon the entire record, including my observation of witness demeanor, and after considering the briefs filed by the General Counsel, the Union, and Respondent, I make the following findings of fact and conclusions of law.

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## I. JURISDICTION AND LABOR ORGANIZATION

Starbucks, a global purveyor of specialty coffee and coffee products with thousands of retail stores worldwide. *Starbucks Corp.*, 372 NLRB No. 93 slip op. at 2 (2022), enfd. 2024 WL 131914 (D.C. Cir. 2024). Some of these stores are located in the State of Oregon. In conducting its business operations, Respondent derives annual gross revenues in excess of \$500,000; it purchases goods valued in excess of \$50,000 for use within the State of Oregon from points directly outside the state. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that this dispute affects commerce and the National Labor Relations Board (NLRB or the Board) has jurisdiction pursuant to Section 10(a) of the Act.<sup>2</sup> (GC. 1(g); 1(i))

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## II. FACTS

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### A. *The West Salem store*

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Starbucks store #9611 sits in a shopping center complex on the corner of Wallace and Glenn Creek roads in Salem, Oregon. The store is in the northwest part of the city and generally referred to as either the “West Salem” or “Wallace and Glenn Creek” store. (ALJ #1; J. 5)

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The shopping center is anchored by a Roth’s grocery store, and contains various out parcels; one such parcel contains a small strip with six or seven different businesses. The West Salem store is located in the southernmost end of this strip mall. There are entrances to the store on the south and east sides of the building; these entrances have adjacent outdoor patio seating. The drive-thru lane used by the West Salem store runs along the entire western wall of the strip mall. The back door is located along store’s western wall, and opens from the back room onto small landing that leads directly into the drive through lane. The West Salem store shares a common wall with a Baskin Robbins, which is located directly to the north of the store. The shopping center has various vegetation, including shrubs, bushes, and trees, which run along the south side entrance of the West Salem store. An island containing bushes, shrubs, and trees runs along the west side of entire drive-thru lane, separating the lane from the shopping center’s parking lot. (Tr. 29) (Tr. 29, 147–148; ALJ #1)

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<sup>2</sup> Citations to the General Counsel, Respondent, Joint, and Administrative Law Judge exhibits are denoted by “GC,” “R,” “J,” and “ALJ” respectively. Transcript citations are denoted by “Tr.” with the appropriate page number. Transcript and exhibit citations are intended as an aid only. Factual findings are based upon the entire record and may include parts of the record that are not specifically cited. Testimony contrary to my findings has been specifically considered and discredited. Unless noted to the contrary, witness demeanor was considered in making all credibility resolutions.

During the relevant time period, Michael Kane (Kane) was the district manager overseeing a portfolio of 14 stores that included the West Salem store. Kane has worked for Starbucks as a district manager since January 2010; he reported to regional manager Josh Presler (Presler). Kane was the district manager overseeing the West Salem store from January 2016  
 5 until August 1, 2023, when he went on paternity leave for an undisclosed period of time. When he returned from paternity leave, Kane was assigned a new district that did not include the West Salem store. (Tr. 382–383, 496, 501, 511; J. 5)

*B. Russell is hired by Starbucks and is assigned to West Salem*

10 In May 2022, Wade Russell (Russell) interviewed for a job as a Starbucks store manager. Russell had recently retired after 30 years in the United States Army, having reached the rank of sergeant major.<sup>3</sup> While in the Army, Russell saw action in Iraq and Afghanistan, where he was the security commander for the 3<sup>rd</sup> Special Forces Group, and was injured when his convoy was  
 15 struck by an improvised explosive device (IED). As a result of the IED, Russell suffered a traumatic brain injury and was diagnosed with post-traumatic stress disorder (PTSD). Russell testified that the Veterans Administration has rated him as 100% disabled as a result of his war injuries, which cause him to suffer some memory and attention deficit issues, along with depression, anxiety and stress, for which he seeks counseling. (Tr. 22–23, 104–108)

20 Kane, along with one of his peers, conducted Russell’s store manager job interview. During the interview, Russell disclosed that he did not know much about Starbucks, did not have any barista experience, and did not even drink coffee, but said that he had great leadership skills from the Army and would bring those skills to the position. Kane believed that Russell had  
 25 “phenomenal experience” from his 30-year military career, thought he would be a valuable asset, a successful store manager, and recommended him for hire. (Tr. 385–386) (Tr. 24, 108–109, 385–386)

30 Russell was hired by Starbucks on May 27, 2022, and started his training in Salem, at a location referred to as the South Commercial store. Having no prior industry experience, Russell started with barista training, progressed to shift supervisor training, and ended with store manager training. Russell said his training period lasted about two months. Russell described the South Commercial store as being “newer” in that the facilities looked as if they had been renovated and the store was clean. After his training ended, Russell testified there was some  
 35 uncertainty as to where he would be assigned. Russell said that, because the West Salem store was having some personnel issues, Kane asked if he could go there temporarily to help. These issues primarily involved the employees at the store who were disgruntled and unhappy with how they had been treated by prior managers, which resulted in time and attendance problems. Even though he was not expecting an assignment to the West Salem store, Russell agreed and  
 40 started working there sometime around August 2022. (Tr. 21–22, 25, 28, 109–111; J. 5)

Russell started working at West Salem as a co-manager, until he became the sole manager in about mid-October 2022. Russell described the West Salem store as being old and

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<sup>3</sup> The rank of Sergeant Major is the “highest enlisted rank in the United States Army.” *McKinney v. Caldera*, 141 F. Supp. 2d 25, 26 (D.D.C. 2001); See also Tr. 23. After 30 years of service regular enlisted members of the Army may retire upon their request. See 10 U.S.C.A. § 7317.

dirty when he arrived, with low employee morale. According to Russell, the West Salem store was an older building in various levels of decay. He described the store as “oddly shaped” and said that when he first arrived at the store and went into the back room he noticed the sink was full of dishes, the area was stuffed with boxes, and there were fly tapes “all the way down the ceiling” with the remains of flies and gnats. (Tr. 30) Also, Russell said there was a garbage can near the back door that was “covered with a mountain of garbage,” the mop sink was “filled with all sorts of stuff,” and the floors in the entire store appeared wet. (Tr. 30) To Russell, it was clear that the store had not been cared for in quite a while. (Tr. 29–30, 111, 428–429)

### *C. Previous managers at West Salem*

Prior to Russell becoming the West Salem store manager, the store was managed by an individual named Christian (Christian). Before Christian, the store manager was named Ashley (Ashley). Kane testified that Christian was assigned to the store temporarily to cover for the existing store manager, presumably Ashley, who was on maternity leave. Christian was the manager of the West Salem store from about May 2022 until around August 2022, when Christian took paternity leave. (Tr. 330–332, 348, 363, 535)

Alicia Flores Barrera (Barrera), a Starbucks employee/partner who worked at the West Salem store from October 2021 until August 2024, primarily as a shift supervisor, testified that when Ashley was the store manager, she strived to ensure employees “were getting everything they needed to be covered.”<sup>4</sup> (Tr. 366) As for Christian’s tenure as store manager, Barrera testified that the store “went downhill” under his leadership. Barrera believed that Christian did not “really care about the issues” partners were having and said the employees were left “kind of on our own a lot.” (Tr. 367) (Tr. 362, 366–367)

Hailey Daike (Daike) worked in the West Salem store from July 2022 until January 2025, as a shift supervisor. According to Daike, under Christian’s leadership the West Salem store had syrup buildup on the walls and grime around the drains; she also said the store “was like how most Starbucks are.” (Tr. 331) Daike further testified that Christian would close “channels” fairly frequently, at least weekly. Channels are lanes of business in the store; for example the drive-thru is considered a channel, as are the lobby, and mobile orders. Barrera confirmed that, during the period of time before Russell became store manager, channels were closed at the West Salem store frequently, and that at least one channel was closed “almost weekly, if not every other week,” when “we needed to catch up, or we were understaffed.” (Tr. 365) And, Russell confirmed that his staff had told him that previous store managers allowed partners to close channels, or open channels late, whenever they felt it was necessary. After having been coached by Kane about this issue, Russell told his staff they could no longer close channels without speaking with him first. (Tr. 50–52, 330–334, 365)

### *D. Pest problems at the West Salem store*

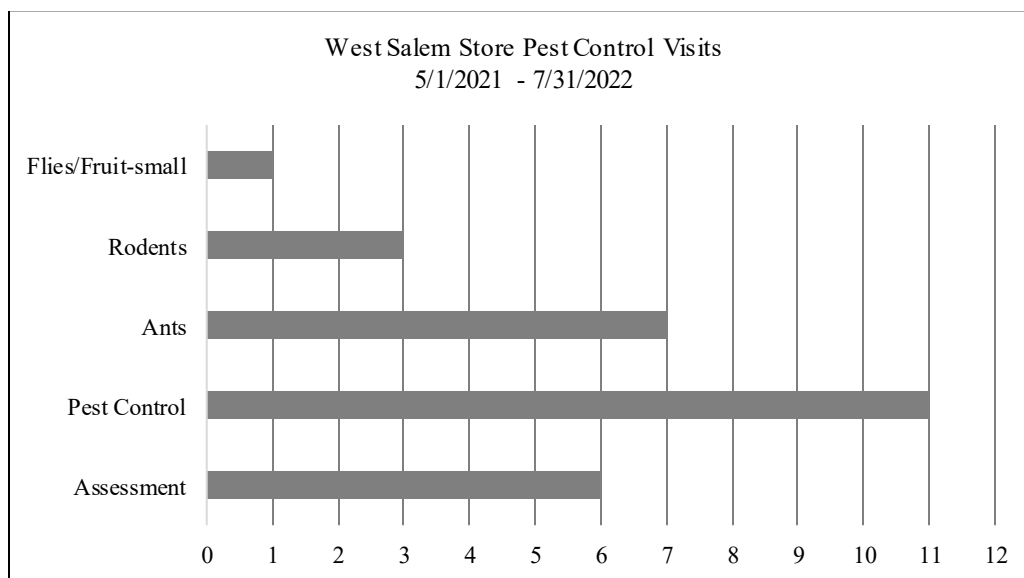
#### *1. Before Russell was hired*

<sup>4</sup> Starbucks refers to its employees as “partners.” (J. 5)

Barrera testified that pests had always been a problem at the West Salem store. In fact, Berrera said there was a pest problem in the store the entire time she worked there. According to Barrera, the main issue were gnats, which would be in the store “around the same time of year” along with an occasional issue with ants. (Tr. 364) According to Deike, in July 2022, the same month she started working at West Salem, the store changed its layout, with some sinks and other items being moved; she said the store has had a pest problem since, including issues with ants, flies, and gnats. (Tr. 331–332, 364)

Starbucks contracts with a third-party vendor for pest control issues. Kane testified that all Starbucks stores receive monthly pest control services, as the company wants to ensure they have food safety standards in place and their stores are clean and pest free. Also, Kane said that tickets can be created for pest control issues, on an as needed basis, in each store. According to Kane, any employee, including a barista, can submit a pest control service ticket using the store’s iPad. The ticket is then automatically dispatched to the pest control vendor to complete the service. Kane said that he did not have the ability to deny a pest control order ticket submitted through the company’s iPad system. (Tr. 423–426, 551)

A document produced by Starbucks pursuant to subpoena, and introduced into evidence as General Counsel’s Exhibit 4, shows the visits conducted by the Respondent’s pest control vendor to the West Salem store for the time period of May 1, 2021 through March 31, 2024. This exhibit shows the name of the pest control vendor, the classification/type of request, the status of the request, the date of dispatch, and planned end date for the services. According to this document, for the approximate 15-month period before Russell was assigned to the West Salem store (from May 1, 2021 through July 31, 2022), Respondent’s pest-control vendor visited the store on 28 different dates. Of these, 13 were listed as “Corrective Maintenance” visits, and 15 were listed as “Preventive Maintenance” visits. The below chart shows the documented reason for each pest control visit. (Tr. 379; GC. 4)



It is unclear from the record how many of these visits were regularly scheduled, made pursuant to a contract with the vendor, and how many were generated due to specific ticket requests

submitted through the store’s iPad. With respect to the visits coded as “Preventive Maintenance,” it appears that before, during, and after, Russell was store manager, except for one or two occurrences, these visits took place between every 28 to 31 days.

- 5           Seven individual invoices from Respondent’s pest control vendor were also introduced into evidence, as Respondent’s Exhibit 31. These invoices show that there were a number of “open recommendations” which had been initiated either before, or just as, Russell became the West Salem store manager. The first invoice, dated December 29, 2022, shows that there were nine recommendations made by Respondent’s pest control vendor that were initiated between  
10   October 19, 2021 and August 19, 2022, that were still “open” around the time Russell took over the store, which Respondent was responsible for addressing. The following chart summarizes the open recommendations, based on these invoices, that were initiated before, or around the time, that Russel first became store manager in West Salem:

Issue	Initiation Date
Condition–Spillage, food residue or standing water inside. Action–Clean/Remove food residue or standing water.	10/19/2021
Condition–Debris accumulated in floor drain. Action–Clean/Remove debris in floor drain to prevent a possible pest infestation.	10/19/2021
Condition–Mops not hung to dry. Action–Hang mops to dry to prevent small fly breeding areas.	3/16/2022
Condition–Floor drains dry or dirty. Action–Clean floor drains.	3/16/2022
Condition–Food source for nuisance insects interior. Action–Clean & sanitize area, keep food debris cleaned up.	5/9/2022
Condition–Mops not hung to dry. Action–Hang mops to dry to prevent small fly breeding areas.	6/13/2022
Condition–Insect light trap–inoperative. Action–Repair ILT or request another device.	8/19/2022
Condition–Caulking missing between tiles. Action–Repair caulking to prevent pest entry.	8/19/2022
Condition–Floor mats dirty. Action–Clean floor mats on regular basis to prevent build-up.	8/19/2022

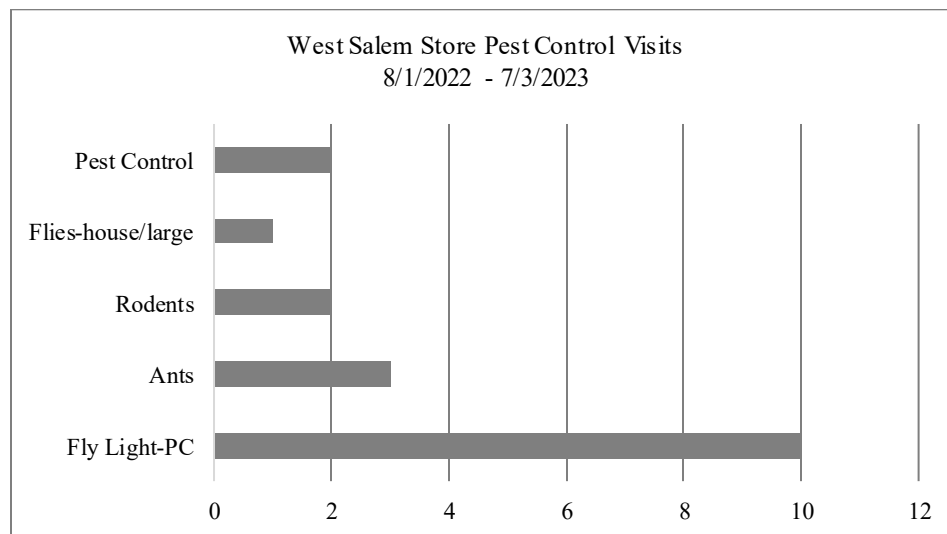
- 15           Regarding the issue of pests in the store when Christian was the store manager, Barrera said that it did not seem as if Christian made much of an effort in that area, and it was the shift supervisors who were submitting tickets and trying to find solutions to deal with the pest problem. (Tr. 366)

- 20           When asked to estimate when the various cleanliness issues at the West Salem store began, Kane testified that “there was a degree of cleanliness opportunity when [Russell] stepped in to lead the store.” (Tr. 392) Kane was requested to explain his answer in simpler terms, and he said that the West Salem store “wasn’t clean” and when Russell started at the store he had an opportunity to apply Respondent’s “clean, safe, ready system to clean and maintain the store.”  
25   (Tr. 392–393) Kane acknowledged that there were cleanliness problems at the West Salem store when Christian was the store manager but testified that Christian never received a written warning for his failure to maintain the cleanliness of the store. (Tr. 392–393, 537)

The accumulation of trash was also a major issue at the West Salem store before, during, and after, Russell’s tenure. There was only one trash can inside the store that could fit about three bags before it had to be emptied into the dumpster in the back parking lot. And, the back door that employees used to take the trash to the dumpster led directly into the drive-thru lane. Thus, to take trash to the dumpster, employees needed to walk down the entire drive-thru lane, requiring them to dodge cars, and then walk across part of the back parking lot to reach the dumpster. Barrera testified that, before Russell became the store manager, it was common for trash and garbage to be piled up by the back door—or piled outside. Similarly, Deike testified that when Christian was store manager, they handled trash by putting it in the back where “it would usually pile up pretty large.” (Tr. 332) (Tr. 43, 56–57, 146–148, 365; ALJ. 1)

## 2. During Russell’s tenure as store manager

As previously noted, when Russell first walked into the West Salem store there were fly strips hanging down from the ceiling that were littered with the remains of flies and gnats. The pest problems at the West Salem store continued even after Russell was hired. According to the pest control vendor summary in General Counsel Exhibit 4, from the period of August 1, 2022, through July 3, 2023,<sup>5</sup> Respondent’s pest control vendor visited the store on 18 different days. Of these, six were listed as “Corrective Maintenance” visits and 12 were listed as “Preventative Maintenance.” The below chart shows the documented reason for the pest control visit during this period.<sup>6</sup> (Tr. 29; GC. 4)



The individual invoices in Respondent’s Exhibit 31 show that the Starbucks pest control vendor also visited the West Salem store on 12/29/22, 1/31/22, 2/22/23, 3/7/23, 3/13/23, 4/22/23, and 6/12/23. For whatever reason, these dates are not included in General Counsel Exhibit 4.

<sup>5</sup> Russell was on leave between July 14, 2023 and his termination, therefore visits in July that occurred after July 14 are not included in the chart. (GC. 15)

<sup>6</sup> After Russell became store manager, 10 of Preventative Maintenance visits were coded as being for both “Pest Control” and for a “Fly Light.” These visits are shown in the chart as “Fly Light-PC.”

The below chart summarizes recommendations that were opened by the pest control vendor involving pest or cleanliness issues on certain of these visits.

Issue	Invoice Date
Accumulated spillage noted on or under equipment. Clean accumulated spillage to prevent a possible pest infestation.	2/22/2023
Excessive clutter. Clean clutter.	2/22/2023
Debris in or around drainage pipes. Clean/remove debris.	2/22/2023
Large amount of trash piled up blocking access. Need to perform bioremediation for Flies at trash bins but cannot due to blocked area. No fly lights present.	4/22/2023

- 5 The recommendations that were initiated on February 22 and April 22, 2023, remained categorized as being “open” on the June 12, 2023 invoice.

10 Russell testified that every time the issue of pests was raised he requested that the store undergo professional cleaning. Russell said that he raised this matter with Kane multiple times, starting in late December 2022 or early January 2023, when they shifted their focus to store operations. Russell also testified he “reiterated over and over” that without a professional pest control service “coming in and basically bombing the store” they would never be able to get rid of the gnats, regardless of the store’s cleanliness. (Tr. 93) Russell believed that, without certain professional services, he would not be able to completely eliminate the pest issue on his own.

15 According to Russell, Kane responded to these requests by saying that the expense could not be justified until the store had first met a certain level of cleanliness. (Tr. 45, 59–60, 67, 93, 97–98, 213–214, 319)

20 Kane acknowledged that Russell requested to have the store “bombed” or fumigated, saying it would have required the store to close so a vendor could use “extreme . . . killer agents” to remove pests. (Tr. 484) Kane testified that he did not approve this request because: the company’s pest vendor continued to tell them to clean the store; it was not a recommendation made by the pest control vendor; and he kept requesting from Russell that the store be clean. According to Kane, it would have been a “different scenario” if they had a clean store, that could

25 not get any cleaner, versus a dirty store with a pest issue. (Tr. 484)

Notwithstanding whatever pest issues that were occurring at the West Salem store, during Russell’s tenure as store manager the facility twice received a perfect score from the Polk County department of environmental health during their semi-annual inspection. One inspection

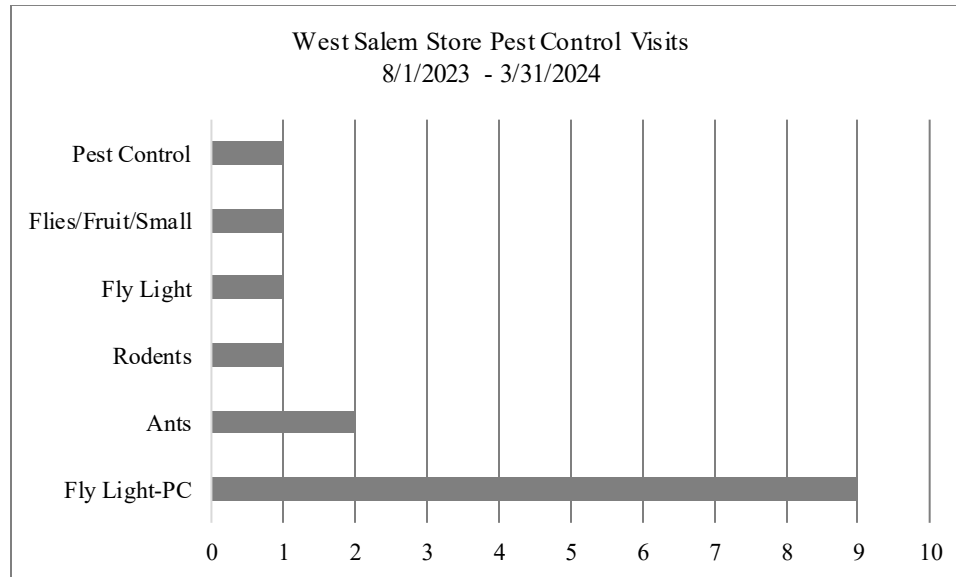
30 occurred on January 13, 2023, and another occurred on July 11, 2023. Both times the store received a score of 100, with no violations. The January 13, 2023 inspection notes “no priority violations found—good job.” (GC. 7) The July 11, 2023 report says “no violations found, good job. Floors are cleaned midday.” (GC. 8) When asked why the West Salem store was not meeting company standards, in light of the perfect scores from the Polk County assessments,

35 Kane said that the “expectations of the cleanliness and food safety in our store exceeds what the scope was on that particular day when the inspector was in the store.” (Tr. 394) (Tr. 100–101, 307–309; GC. 7, 8)



### 3. After Russell was fired.

The pest problems and cleanliness issues at West Salem continued even after Russell was fired; Deike testified that there were ants, flies, and gnats at the store until she stopped working there in January 2025. The pest control summary schedules in General Counsel Exhibit 4 show that the Starbucks pest control vendor visited the store on 15 different days between August 1, 2023 and March 31, 2024. Six visits were listed as being for “Corrective Maintenance” and nine as “Preventative Maintenance.” The below chart shows the documented reason for these visits. (Tr. 343–344)



The General Counsel also introduced into evidence 18 individual invoices documenting visits to the West Salem store by Respondent’s pest control vendor for the following dates: 11/29/23, 12/4/23, 12/11/23, 12/18/23, 12/26/23, 1/2/24, 1/9/24, 1/19/24, 2/9/24, 2/15/24, 2/29/24, 3/8/24, 3/14/24, 3/21/24, 3/30/24, 4/5/24, 4/17/24, 4/23/24. (GC. 22) As with the invoices introduced in Respondent’s Exhibit 31, these dates are not included in General Counsel Exhibit 4. It appears from the invoices that, at some point, the West Salem store was put on a pest treatment “escalation.” (GC. 22 #0000387) The below chart lists relevant pest, insect, or sanitation issues, involving the West Salem store that are noted in the invoices.

Issue	Invoice Date
<ul style="list-style-type: none"> <li>Mouse droppings that appear old found behind pastry freezer.</li> <li>Invoice references “pending” sanitation issue from August 9, 2023, of water debris collecting under floor mats, with accompanying picture.</li> <li>Invoice references “new” sanitation issue from August 9, 2023, of pooling water throughout the store and on counters, with accompanying pictures.</li> <li>Invoice references “new” sanitation issue from August 9, 2023, of drains containing decomposing organic matter, with accompanying picture.</li> </ul>	11/29/23

<ul style="list-style-type: none"> <li>• Invoice references “new” sanitation issue from September 21, 2023, of trash stacked against the back door, with accompanying picture.</li> <li>• Invoice references “pending” sanitation issue from September 21, 2023, of food and debris collected under refrigerators and shelving, with accompanying pictures.</li> </ul>	
<ul style="list-style-type: none"> <li>• Invoice references: the 8/9/23 issue involving drains containing decomposing organic material; the 8/9/23 issue involving pooling water throughout the store and on counters; the 9/21/23 issue involving food and debris collected under refrigerators and shelving; and the 9/21/23 issue involving trash stacked against the back door.</li> <li>• Treatment notes say that fly issue seems to be subsiding but that sanitation is still a problem.</li> </ul>	12/4/23
<ul style="list-style-type: none"> <li>• Invoice references: the 8/9/23 issue involving drains containing decomposing organic material; the 8/9/23 issue involving pooling water throughout the store and on counters; the 9/21/23 issue involving food and debris collected under refrigerators and shelving; and the 9/21/23 issue involving trash stacked against the back door.</li> <li>• Inspection results note miscellaneous flies in two different areas inside the store (between 5 to 10 flies in one area and between 11 to 25 in another), along with evidence of rodent feeding found on the exterior of the store.</li> </ul>	12/11/23
<ul style="list-style-type: none"> <li>• Treatment notes say that sanitation is still an issue, trash is still piled up at every visit, and the sanitation in and around the drains is “horrendous,” even after cleaning.</li> <li>• Treatment notes say that “this location needs upper management intervention on the Starbucks side as our management team has visited this location several times.”</li> <li>• Inspection results note rodent feeding on the exterior of the store.</li> </ul>	12/18/23
<ul style="list-style-type: none"> <li>• Treatment notes identify: one or two ants near syrup, desk, and triple sink; ants reported at syrup and back sink; and triple sink right drain had some fly activity.</li> <li>• Inspection results note presence of “odorous house ants” (between 1 to 10) and drain/moth flies (between 5 to 10).</li> </ul>	12/26/23
<ul style="list-style-type: none"> <li>• Invoice references a new sanitation issue involving a “dry” drain trap, which is allowing pest entry, and instructs the store to “[p]lease add water to the trap to block the pest entry.”</li> <li>• Treatment notes state that “[t]rash is piling up at back of house. Sanitation of floors is not improving. Mats are dirty and floor under them has gunk that is breeding area for flies. Please rectify this asap.” Accompanying picture shows trash that is piled up in a corner/against a wall.</li> </ul>	1/2/24
<ul style="list-style-type: none"> <li>• Invoice references a new sanitation issue stating that refrigerators have heavy moisture in back compressors, and recommends draining and sanitizing. Accompanying pictures show the areas in question.</li> <li>• Treatment notes say that inspection was made for small flies and uncovered “heavy fly activity.” Heavy standing water was found behind pull out refrigerators. Recommendation was made to address the standing water and</li> </ul>	1/9/2024

<p>to clean the sludge buildup in drain pipes running from the sinks to the floor drains as there was “crud in pipes and a breeding ground for fruit flies.”</p> <ul style="list-style-type: none"> <li>• Inspection results note miscellaneous flies in two different areas inside the store (between 5 to 10 flies in one area and between 11 to 25 in another), along with evidence of rodent feeding found on the exterior of the store.</li> </ul>	
<ul style="list-style-type: none"> <li>• Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter; and the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> <li>• Treatment notes say there was “minimal fly activity noted at this service,” but that “sanitation is still an issue at this location.”</li> </ul>	1/19/24
<ul style="list-style-type: none"> <li>• Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter; and the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> </ul>	2/9/24
<ul style="list-style-type: none"> <li>• Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter; and the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> <li>• Treatment notes state that sanitation is getting worse around drains, which were treated but may need a “deep cleaning with brush at next service.”</li> </ul>	2/15/24
<ul style="list-style-type: none"> <li>• Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter; and the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> <li>• Treatment notes say that “cleanliness seems to be better but still needs work.”</li> </ul>	2/29/24
<ul style="list-style-type: none"> <li>• Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter; and the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> <li>• Treatment notes say that the house drain under the sink was treated, but that it needs to be professionally flushed and cleaned.</li> <li>• Inspection results note rodent feeding on the exterior of the store.</li> </ul>	3/8/24
<ul style="list-style-type: none"> <li>• Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter, and the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> <li>• Treatment notes say that the “[d]rain fly issue persists. Need to wash and dry black mats and clean debris and gunk accumulated in them as flies are breeding there.” And, bait needs to be “replaced due to mouse feeding.”</li> <li>• Inspection results note rodent feeding on the exterior of the store.</li> </ul>	3/14/24
<ul style="list-style-type: none"> <li>• Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter, and the 1/9/24 issue and</li> </ul>	3/21/24

<ul style="list-style-type: none"> <li>recommendation involving heavy moisture in back compressors of refrigerators.</li> <li>Treatment notes say that the exterior perimeter and bait stations were inspected for pest and rodent activity and moderate feeding was noted.</li> <li>Inspection results note rodent feeding on the exterior of the store.</li> </ul>	
<ul style="list-style-type: none"> <li>Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter, and the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> </ul>	3/30/24
<ul style="list-style-type: none"> <li>Invoice references: the 1/2/24 issue and recommendation involving the dry drain trap which is allowing pests to enter, and the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> </ul>	4/5/24
<ul style="list-style-type: none"> <li>Invoice references the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> <li>Treatment notes say that “[s]anitation has improved considerably due to the hard work of the staff and manager, making sure the mats are cleaned and floor mopped regularly to help prevent fly issues. I believe this store can be taken off escalation.”</li> </ul>	4/17/24
<ul style="list-style-type: none"> <li>Invoice references the 1/9/24 issue and recommendation involving heavy moisture in back compressors of refrigerators.</li> <li>Treatment notes say that sanitation has improved.</li> </ul>	4/23/24

*E. Russell focuses on reviving morale and teamwork amongst store employees*

5 When he arrived at the West Salem store, Russell said that it was apparent the employees were a “negative group” that were unhappy with the lack of support they had received from previous store managers. (Tr. 28) Therefore, his first order of business was to focus on the partners, and to “just build the team . . . up” and “create a great Starbucks environment” where employees wanted to work at the West Salem store. (Tr. 31) According to Russell, the focus on building the proper team environment was made in consultation with Kane, who told Russell that  
10 they could not move forward with store operations or anything else until they “got the team up and ready to go.” (Tr. 31–32) After they reached this point, they could then start working on other issues involving store operations. During his first six months at the store, Russell testified that Kane would come to the store on planned visits about once a month. (Tr. 28, 31–32, 96–97, 111–112)

15 Russell’s focus on building the store’s team environment took several months to complete, and it appears his efforts were successful, as Russell was well liked by the West Salem partners. Deike testified that Russell treated employees “very well,” said that he was “a good manager to us,” and that workers thought very highly of him as a store manager. (Tr. 339)  
20 Similarly, Barrera testified that Russell managed the store “very well,” said that he took time to get to know his staff and cared a lot about making sure that West Salem partners felt supported and had everything they needed. (Tr. 367) In fact, Barrera said that she believed Russell was “probably one of the greatest managers,” she had worked under at Starbucks and described him as a “breath of fresh air” compared to her previous store managers. (Tr. 375) According to

Barrera, Russell genuinely cared about the well-being of the employees and brought the workers together as a team. Barrera said that that if Russell had not been at the West Salem store during what she described as “that rough period of time,” she would not have stayed there as long as she did. (Tr. 375) Even Kane acknowledged that Russell was successful in his focus on enhancing the team spirit of employees saying that Russell was “absolutely” successful in improving morale at the store. (Tr. 401) Kane said that Russell built team camaraderie, helped employees feel cared for, and the partners “really enjoyed” Russell and being a part of his team. (Tr. 112, 339, 367, 375, 386, 401)

In managing store employees, Russell relied upon his military experience. In lieu of issuing a slew of documented disciplines, Russell testified that he would sit down with employees and talk to them. Using a “coaching style,” Russell said that he would “let the employee . . . find their own things they needed to improve on,” and then guide them in “self-discovery” of what aspects of their jobs needed improvement. (Tr. 33) According to Russell, this approach was successful 90 percent of the time, and therefore he rarely had to issue documented disciplines. (Tr. 33)

Russell’s first few months as the West Salem store manager were not without its hitches. On December 29, 2022, Kane drafted a written warning for Russell, which he delivered to him on January 6, 2023, primarily involving training issues. The written discipline states that on various dates in November and December 2022, the West Salem store had between 23 and 25 “mylearning modules past due,” and that since October 28, 2022, “the store has not been current on training completion.” (R. 2) Kane described the mylearning modules as being “part of our training structure, both initially and then ongoing,” and said there are modules covering different aspects of store operations, including new promotions, safety and security, illness trainings, and “other policies that were required for partners to complete.” (Tr. 388) Kane said it was store employees who were delinquent in their trainings, and that it was up to Russell to ensure that his team members completed the training. Finally, the discipline also notes that Russell closed the store’s mobile order system on December 16, 2022, “due to absences that could not be covered,” and that the store manager’s job description includes monitoring and managing store staffing levels to ensure employee development and maintain store operational requirements. (R. 2) Russell originally testified that he had not received any documented discipline prior to May 2023, but when shown the December 29 written warning he confirmed having received the document. (Tr. 45–46, 128–130, 388–389; J. 1; R. 2)

#### *F. Russell shifts focus to operations*

Russell testified that, sometime around December 2022, the management focus shifted from building up the employee team to running the store. Having developed his team, Russell testified that he had a conversation with Kane saying that he was going to switch focus and concentrate more on store operations. According to Russell, Kane told him that he had done a great job building the team and that they were at a point where they could focus on the business side of operations because he believed the West Salem store could be one of the top stores in the district. (Tr. 36–37, 97–98, 112–113)

By this point in time, Russell had identified some structural issues involving the store's floors, which he said had not been cared for in a very long time. Russell testified that the grout between the tiles was low or missing, resulting in debris and dirt getting stuck between the tiles which could not be removed unless it was physically dug out. The grout problem also created draining issues, causing the floors to stay wet. The continuously wet floors, in turn, resulted in floor boards and wood that was rotted and/or cracked. Regarding his progress as a new store manager, Russell testified that during his first six months he felt very positive about the performance reviews he had received from Kane. Russell said Kane expressed that he was doing a great job, told him to keep up the good work, and would point out things that Russell could improve upon, including scheduling and staffing, which Russell said were areas where he was still struggling. As for Kane's supervision during this period, Russell said that Kane would hold a meeting with all store managers in his district each Monday, usually by video. Russell would also interact with Kane via email or chat, and they would meet in person once a month. Russell said that Kane also reviewed his quarterly performance, and during this time he felt very positive about how things were going. (Tr. 30, 34–35, 175, 220, 238)

As he transitioned to focusing on operations, Russell said that he was doing a lot of "discovery training" or "discovery learning." (Tr. 38, 40) According to Russell, Kane would walk the store with Russell, who would ask questions, and Kane would explain procedures for various tasks. Russell said he implemented Kane's feedback, creating a timeline for completion, which Kane would review on his next visit to see if the goals had been met. Russell characterized the tone of these visits as collaborative, and said Kane was a great teammate, was always very positive, and provided great insight. Russell testified that he and Kane worked together as a team to come up with solutions, and said Kane was always very understanding of the fact that Russell was still learning. (Tr. 37–40)

On December 16, 2022, Russell sent Kane an email with the subject "SMART goal plan." (R. 1) At Starbucks, SMART is an acronym for "Specific, Measurable, Actionable, Realistic, and Timely." (Tr. 397) The email reads as follows:

Here is my draft ready for review and notes:

SMART Goal: Meet requirements of Clean, Safe and Ready

- Use steps to excellence Food safety assessment and clean, safe and ready system check as success metric
- Use operations station cards as guide for routines
- Adjust customer support cycle and routine to meet clean, safe and ready standards
- Use shoulder-to-shoulder training with SSVs [shift supervisors] and coach in the moment with all partners
- Follow SM [store manager] approach for Ops [operational] standards and continuous improvement

19 Dec - Begin coaching partners on clean, safe and ready practices and routines to support plan

2 Jan - Meet with SSVs to discuss plan, roles and responsibilities

3 Jan - Begin shoulder-to-shoulder training with SSVs  
 16 Jan - Conduct initial clean, safe, ready system check and food safety assessment  
 17 Jan - Review findings and assess gaps and adjust focus areas  
 18 Jan - Continue shoulder-to-shoulder work with new focus areas  
 5 23 Jan - Conduct clean, safe, ready system check and food safety assessment  
 27 Jan - On-site review with District Manager

Russell testified that the term “clean, safe, ready,” pertains to a checklist that is “in the readiness book,” which discusses the store being clean to standards where it is safe to serve food and  
 10 beverages and the store is ready to serve customers. (Tr. 311) (Tr. 113, 311, 397; R. 1)

On December 30, 2022, Russell received an email from Petra Wright (Petra); Kane was copied on the email. According to Russell, Petra was a “manager in training” who was being trained by Kane. In the email, Petra wrote “[w]e are excited for our time together to review your  
 15 Winter period plans,” and she asked Russell to provide various action plans, timelines, the top areas where he needed support, and other topics he wanted to review during their upcoming visit. (R. 6) Russell replied to Petra and Kane on January 4, 2023, and included an action plan and timelines. He also attached his SMART goals. As for the top areas where he needed support, Russell wrote “staffing and scheduling.” (R. 6) (Tr. 131–132; R. 6)  
 20

Kane testified that he reviewed Russell’s SMART goals,<sup>7</sup> and said that Russell was able to complete most of the actions in the SMART goals, but not the outcomes. According to Kane, two actions that Russell was not able to complete were the use of store operations station cards and adjusting the customer support cycle/routine to meet the clean, safe and ready standards.  
 25 The operations station cards are physical cards designed to assist employees with cleaning tasks. The cards are meant to be used with erasable marker, and instruct employees on cleaning tasks or procedures that needed to be completed. Employees are supposed to use a marker and make notes on the cards while checking off task that have been completed. As for the customer support cycle, Kane said this refers to the partner who is responsible for brewing coffee, doing  
 30 the operations station cards, and checking and cleaning the café and bathrooms. There was no janitorial service at the store. Instead, along with making coffee and serving customers, baristas were also supposed to clean the bathrooms. (Tr. 65, 158, 196, 397–399)

On January 15, 2023, Russell emailed Kane and Petra saying that, after reviewing the  
 35 store manager approach, and using “Steps to Excellence,” that he was at the “owning stage” of his development plan as a store manager. (R. 7) The store manager approach and Steps to Excellence are company resources available to store managers. Russell’s self-assessment in the email was that he had definite room for improvement in certain areas including: business acumen and problem solving; prioritizing and planning; sales and inventory; operational  
 40 standards & continuous improvement (which included clean, safe, and ready practices); culture, collaboration, and communications; coaching for improvement and performance; staffing and scheduling; teaching and training; and team building. (Tr. 122, 149–151; R. 4, 7)

#### *G. Delivery readiness notification emails*

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<sup>7</sup> Transcript page 397, line 7 should read “PPV—a period planning visit,” instead of “PCP—a period cleaning visit.”

Starting in January 2023, the West Salem store began receiving automated “Delivery Readiness Notification” email messages; Kane was copied on the emails. These messages are generated from third-party delivery drivers, who deliver product to the store in the evening when it is closed. Delivery drivers use a handheld device that generates an email message if there is an issue concerning deliveries to the store; pictures and a description of the specific issue can be uploaded into the email. The below chart shows the delivery notification messages in the record for the West Salem store. (Tr. 243–254, 394–395; R. 24)

Date	Description of issue
1/8/2023	Trays/totes not stacked for pickup
1/23/2023	Trays/totes not stacked for pickup
2/4/2023	No lunch totes available at store for pickup
2/12/2023	3’ path required to back of house; trays & totes not nested/stacked for pickup
3/5/2023	Trays/totes need to be placed by the front door
3/17/2023	Trays/totes need to be placed by the front door
3/29/2023	The freezer was found out of temp on arrival
4/4/2023	Driver needed to reorganize the refrigerator to fit order
4/9/2023	Trays/totes need to be placed by the front door
4/19/2023	Driver needed to reorganize the fridge to fit order
4/27/2023	6’ x 6’ clear space needed to place order
5/16/2023	Trays & totes are required to be placed by the front door
6/18/2023	3’ path required to back of house; trays/totes need to be placed by the front door
6/18/2023	3’ clear path required to back of house; freezer out of temp on arrival
6/25/2023	Driver needed to reorganize the refrigerator to fit order
7/23/2023	Trays/totes not stacked for pickup

Kane described these messages as exhibiting a “gap” in how a particular store is ready for after hour deliveries, and said they reflected an inability on the part of Russell to have his team execute and change their behavior, after having been properly coached. Russell testified that once he received these notifications, he would look at the date, see which employees were on duty for the closing shift, show them the related photo or message, and coach them on the proper procedure. With respect to the notice involving the freezer temperature, Russell testified the temperatures are controlled digitally through the store’s iPad, with internal thermometers used as a backup. Each morning the employee scheduled to open the store checks all the temperatures and adjusts them if needed. According to Russell, while he may have discussed these messages briefly with Kane, they were not a regular point of emphasis. (Tr. 248, 251–252, 254, 319–320, 394–397)

#### *H. Customer complaints about the store*

On February 12, 2023, a customer submitted a complaint to the Starbucks “customer care” division about the West Salem store; customers can submit these complaints either by telephone or an online chat message system. The complaint was then emailed to Kane on February 16 by the customer care division. The email includes a case reference number, and



designates the severity of the complaint as being “low.” A synopsis of the customer complaint in the email reads as follows: “Customer called because they wanted to complaint [sic] about the store because the service is poor, and the store looks very dirty and the bathroom [sic] aren’t clean.” (R. 8) Kane forwarded the email to Russell the same day writing, “not sure if this  
 5 customer shared with you too; let’s chat on it tomorrow.” (R. 6) Russell responded by email on February 17, saying he knew about the complaint and had discussed it with the shift supervisor. According to Kane, he occasionally receives customer complaints but they usually concern the quality of a beverage; he said it was uncommon to receive a complaint about a store’s cleanliness. (Tr. 152–157, 402, 404; R. 8)

10 On April 9, 2023, a customer who Kane knew named Shawn sent him an email complaining about the condition of the West Salem store. In the email, Shawn wrote “Good Morning Michael,” and said he visited the West Salem store “this last Saturday” and found some concerns that he wanted to share. (R. 28) Shawn included two pictures, one of the drink counter  
 15 and another of a counter in the store containing two openings for trash disposal. In the email, Shawn did not say what his concerns were regarding the two pictures; it is unclear from the photograph what issues he had with the drink counter. The picture of the trash counter shows that the two trash openings were full, or nearly full, and needed emptying; it appears the counter also needs to be wiped down. Shawn wrote in the email that the tables in the store were  
 20 extremely sticky, that traffic was light, and that he knew as “a business man myself,” that he would like to be informed about a customer issue. Shawn ended the email by noting his belief that the other Starbucks stores in the area were clean and better kept than the West Salem store. (Tr. 419–420; R. 28, 29)

25 Finally, the record shows that on April 20, 2023, a customer contacted the Starbucks customer care team wanting to report a concern with the hygiene of one of the baristas working at the West Salem store. The complaint generated an automated message which was emailed to Kane. (Tr. 421–423; R. 30)

### 30 *I. Cleaning procedures in the West Salem store*

Regarding the cleaning procedures at the store, Russell testified that cleaning the bathrooms, the lobby, and making trash runs to the dumpster, usually occurred between 10 a.m. and 11 a.m., after the peak morning rush hour, and then again around 3 p.m., just before the  
 35 “dinner-type rush showed up again.” (Tr. 158–159) Then, after the store closed, Russell said that they did a deeper clean, by breaking down all the stations and cleaning whatever needed to be cleaned. Russell also testified that every Tuesday they did a “clean play,” where partners stayed an hour or two after the store was closed for a deep cleaning. (Tr. 43–44) According to Russell, by March and April 2023, while the West Salem store still had cleaning issues, they  
 40 were continuing to make improvements while identifying areas that needed additional development. Russell said that he continued having store walks with Kane, and said he also did them on his own, to assess areas and practices that needed additional work. (Tr. 43–44, 158–160)

45 According to Kane, between February 17, 2023 and May 8, 2023, every couple of weeks he would connect with Russell about issues regarding store cleanliness, staffing, and store

operations. Kane said that sometimes these connections occurred in person, where they walked through the store together, or by telephone, where they discussed the store’s progress. Kane testified that, during this time, he did not see improvements with the store’s cleanliness. Kane said that the buildup of dirt and debris continued and the pest problem was getting “more and more significant.” (Tr. 406) (Tr. 405–406)

Russell testified that his store was only assigned a certain number of labor hours that were available as “non-work hours” to use for cleaning.<sup>8</sup> (Tr. 305) According to Russell, several times a month he requested that Kane approve extra labor hours for the store so he could assign more staff to clean, but Kane denied these requests saying that extra hours were not available. Russell also testified that, in May 2023, Kane gave him instructions to limit work schedules because Russell was “over” on partner work hours and needed to get those back down to the appropriate level. This testimony was supported, in part, by Barrera who testified that April and May 2023 were very stressful and a very hard time in the store because Starbucks was “cracking down” on operational issues while also cutting partner work hours “a lot.” (Tr. 368) Kane, by contrast, testified that “additional hours of noncoverage” were “enabled” in order to support the cleaning of the store after closing hours. According to Kane, all stores have a set “budget” of “noncoverage” work hours, which are labor hours that are not used to serve customers. Kane asserted that additional hours, above the allocated budget, were spent at the West Salem store for cleaning. Kane also testified that he did not believe employees at the store were completing the weekly clean plays. Kane said that at least six employee hours should be scheduled for a clean play, but believed that the West Salem store did not use or schedule the full allotment all the time. No documents were introduced into evidence regarding the allotment of employee work hours. (Tr. 304–305, 368, 406–407, 438, 406)

*J. Kane submits a workplace accommodation request for Russell*

Kane testified that sometime in February 2023, he submitted a workplace accommodation request for Russell. According to Kane, a district manager he can submit an accommodation request on behalf of any employee; thereafter the employee needs to follow-up with documentation showing an accommodation was needed. Kane said that his February 2023 request was not approved because there was no specificity as to what type of accommodation was being requested or any supporting documentation. (Tr. 433–434)

The record also shows that Kane submitted an accommodation request for Russell sometime in mid-May 2023, which Kane said he submitted on his own accord because Russell was a disabled veteran. An email dated May 19, 2023, from Laura Dean (Dean), a Starbucks partner relations consultant, confirmed the request. In the email Dean wrote that she had contacted Russell asking for supporting documentation. The email attached a letter and job description for Kane to provide Russell. It is unclear from the record if Kane ever provided the attached documents to Russell. (Tr. 433–436; R. 26)

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<sup>8</sup> To determine staffing needs, it appears that Respondent uses an automated labor metrics system which store managers must follow unless approval is received from their district manager; this system assigns store managers a limited number of labor hours for staffing across all categories, based upon projected sales and the number of customers. See *Starbucks Corp.*, No. JD(SF)-29-24, slip op. at 14 fn. 61, 2024 WL 4474953, fn. 61 (2024), adopted in the absence of exceptions 2024 WL 5168491 (Dec. 18, 2024). See also Tr. 184, 400–401.

On June 14, 2023, Dean sent an email to Kane saying that Russell was sent a message asking for updated medical information regarding the accommodation request but that no documentation was received. Accordingly, Dean wrote that Respondent was unable to review the request, but that once medical documentation was received, the information would be reviewed at that time. (R. 27)

*K. Kane issues Russell a written warning in May 2023*

On Monday May 1, 2023, Kane sent Russell an email with the subject “ppv agenda.” (R. 9) In the email Kane wrote that he was looking forward to their upcoming meeting on Wednesday, and asked Russell to provide him with notes or a development assessment regarding certain topics including store culture, the development of Russell’s priorities, operational station card usage, cleanliness, staffing/coverage needs, drive-thru window operations, training completion, and commitments/next steps. Russell testified that this email was for the summer period planning visit or summer launch. On May 7, Kane sent Russell a Microsoft Teams meeting request for a meeting the next morning at 9:00 a.m. In the request, Kane asked “could we connect for a few minutes? I’d like to check in on staffing, cleanliness and what you found with channels.” (R. 10) It is unclear whether the period planning visit or the May 8 virtual meeting occurred. But, on May 16, Kane was at the West Salem store and delivered a written discipline to Russell, which was dated May 6.<sup>9</sup> (J. 1) The narrative portion of the discipline lists specific items going back to February 2023, and reads in pertinent part as follows:

Staffing and Scheduling:

On 5/6/23 operations at 9611 were suspended 3 hours early due to insufficient staffing. Channels were closed earlier in the day as well due to the inability to staff the store.

On 5/4/23 Wade was unable to join peers in a district observation exercise due to staffing gaps in the store.

On 5/3/23 Wade was unable to keep his planning visit with the dm due to staffing gaps in the store. The lobby channel was unable to open on time due to staffing gaps.

On 4/18/23 the lobby channel was closed for an hour due to staffing gaps. The DM on point was not notified of the channel closure.

Ops Standard, Cleanliness:

On 5/1/23 the district manager observed the store very dirty and flying insects were visible. Floors, counters and walls had debris and objects were blocking the floors from being accessed for cleaning.

On 4/20/23 the district manager communicated the need for Wade to prioritize store cleanliness due to continued gaps and customer feedback. Customer comments from week 28 & 27 report gaps in cleanliness and maintenance of the store: dirty tables, full trash, dirty countertops.

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<sup>9</sup> No explanation was given as to why there was a 10-day delay between the date on the discipline and the date it was presented to Russell.

On 4/9/23 a customer sent pictures to the district manager showing full trash cans, dirty counters tops and a dirty hand off plane.

On 3/15/23 The Retail Public Health Advisor (along with the FSM and DM walked Wade through the cleanliness gaps leading to the flying insect issues in store.

On 2/22/23 the district manager observed observed [sic] and learned that the customer support role was not in place. The dm reviewed with Wade and asked for implementation.

The store cleanliness and Clean Safe Ready system is not in place even after Wade executed an action plan in January to eliminate cleanliness gaps.

The district manager has repeatedly reviewed the cleanliness gaps with Wade and improvement has not be [sic] sustained.

#### Communication

On 4/20/23 the district manager reviewed reporting that indicated lobby closures that were not approved or reported. Wade was to report his findings from partner connections to the district manager. No communication from Wade regarding what happened during the dates reviewed with the DM have been forthcoming.

As communicated in the Job description a store manager:

- Monitors and manages store staffing levels to ensure partner development and talent acquisition to achieve and maintain store operational requirements.
- Provides coaching and direction to the store team to take action and to achieve operational goals. Constantly reviews store environment and key business indicators to identify problems, concerns, and opportunities for improvement to provide coaching and direction to the store team to achieve operational goals.
- Drives the implementation of company programs by developing action plans and directly motivating and instructing the store team to implement them to meet operational and organizational objectives.

As communicated in the SM Approach:

- Ensures cleanliness and food safety systems are used to keep the store clean, safe and ready to serve customers.
- Leverages forecasting and reporting data to schedule and build plays to meet the needs of customers, partners and the community.

Going forward, the store must be clean and safe for customers. Going forward, Wade must staff the store to ensure uninterrupted operations. Going forward, Wade must respond to OM inquiries and business impacts and partner accountability promptly. Failure to accomplish the outlined above may result in further correction action up to and including separation of employment.

Both Russell and Kane signed the document on May 16. (Tr. 46–47, 161–167; R. 9, 10; J. 1)

Regarding his May 16 meeting with Kane, Russell testified that when the discipline was presented to him Kane had a “very positive tone,” but let Russell know that he was not

improving as well as expected as a store manager and it warranted documenting. (Tr. 47) Russell said that Kane did not go through discipline line by line, as all the items noted were matters they had already talked about at various times. Instead, Kane gave him a “broader summary” of some of the things that were continuing to happen, including staffing and scheduling issues, along with some of the “operations things that we were still figuring out and then some of the communications.” (Tr. 48) Russell said the conversation with Kane felt “very collaborative” and was “very positive” like all their previous discussions. (Tr. 48) Thus, Russell testified that he did not feel as if he was “in trouble,” instead he believed Kane was coaching him on some of the items they needed to “lean into and focus on.” (Tr. 48) According to Russell, after their discussion he felt very positive and empowered to step forward and do his best to try and improve on some of the areas mentioned in the discipline. (Tr. 47–49, 51, 167–175, 185–187)

Regarding his meeting with Russell on May 16, Kane testified that they “reviewed the document, the connections that we’d had, and the coaching throughout it,” by reading “through the staffing and scheduling, ops standards and cleanliness and communication gaps.” (Tr. 428–429) Kane said he explained to Russell that the failure to accomplish the tasks outlined in the discipline could lead to further corrective action up to and including discharge. As for Russell’s progress as a store manager since December 2022, Kane said that there were temporary improvements in staffing and scheduling, but there was still a problem with callouts in the store. As for the narrative portion of the discipline, Kane testified that it memorializes “connections” that he made with Russell regarding the issues discussed in the document. According to Kane, the issues outlined in the written warning showed that, as a leader, Russell was unable to implement practices needed to clean and maintain the store’s cleanliness. (Tr. 429–432)

After receiving the written warning, on May 20, 2023, Russell emailed Kane a cleaning plan, which was a type of checklist, allocating 8 work hours for cleaning different areas of the store. Russell’s cleaning plan was broken down as follows: floors–2 hours; drains–1 hour; walls–1 hour 15 minutes; bathrooms–45 minutes; fridges–30 minutes; food case–15 minutes; stations–1 hour; mop sink–15 minutes; trash–1 hour. In the email, Russell asked Kane to review the plan to see if he had missed anything, and said that, after speaking with his peers, it appeared he would have more support on Monday than Sunday, so he planned on a two-pronged approach and would “hit as much as we can on Sunday, then follow-up and complete on Monday.” (R. 11) Russell testified that he implemented the plan and was happy with the results as there were great improvements. But, but as with any food service area, Russell said that “it only stays clean for so long.” (Tr. 190) Kane testified that he reviewed the cleaning plan with Russell, and said that while the activities within the plan were completed, it failed to solve the store’s cleanliness issues. Kane said that, while the West Salem store had moments of improvement, there was no “maintenance of the cleanliness that was executed on any given day.” (Tr. 439) According to Kane, this exhibited a lack of leadership on Russell’s behalf, as Kane believed Russell was lacking in the “ability to teach and coach or hold your partners accountable to the expectations of having the store clean and our systems to clean the store.” (Tr. 439) (Tr. 190, 437–439; R. 11)

*L. May 27 final written warning*

Less than two weeks after giving Russell a written warning, on May 27, 2023, Kane presented Russell a final written warning; the document is dated May 25. (J. 2) (Tr. 61) The narrative portion of the discipline reads as follows: (J. 2)

5 Ops Standards, Cleanliness:  
 On 5/16 the district manager observed that the store was very dirty with buildup, flying insects were considerable around the store. The operations station and cards are not used to maintain clean, safe, and ready standards. The station assessments were seen to be inconsistently completed.  
 10 The district manager provided Wade with direction to have the store clean by 5/19. On 5/19 the district manager observed the same gaps as noted on the 5/16 visit. Wade committed to having the store clean, safe and ready by 5/22. On 5/24 the district manager observed that while slight improvement was noted, dirt buildup continued in the store, pest activity was significant as well as the  
 15 breeding areas evident and unclean. Upon arrival the district manager observed that none of the 7 partners present in the store, including the store manager, had completed the partner health check. The operations station cards were not in use and the station assessment was not completed.  
 20 Wade communicated during this visit that the store would be clean later that day and the district manager would be able to observe the store clean, safe, and ready on 5/27.

As communicated in the job description a store manager:  
 25 - Provides coaching and direction to the store team to take action and to achieve operational goals. Constantly reviews store environment and key business indicators to identify problems, concerns, and opportunities for improvement to provide coaching and direction to the store team to achieve operational goals.  
 - Drives the implementation of company programs by developing action plans and  
 30 directly motivating and instructing the store team to implement them to meet operational and organizational objectives.

As communicated in the SM Approach:  
 • Ensures cleanliness and food safety systems are used to keep the store clean,  
 35 safe and ready to serve customers.

As communicated on pg. 50 of the Partner Guide:  
 Store managers are responsible for administration of the safety program within the store as well as the correction of safety hazards, supported by field  
 40 management and the Global Safety and Compliance team at Starbucks Support Center. This includes the execution of practices as outlined in the communicable disease resources which requires all partners to Complete the Partner Check Tool at the beginning of their shift and have the shift supervisor validate the partners ability to work.

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Going forward, the store must be clean and safe for customers. Failure to demonstrate the above and other Starbucks policies, the store manager job description and store manager approach may result in further corrective action up to and including separation of employment.

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Russell testified that the final written warning started as a verbal conversation that occurred probably on May 25, when Kane visited the West Salem store with Presler. At the time, Russell said that he did not know Presler's identity. According to Russell, Kane and Presler walked the store by themselves, and then pulled him into the back room to discuss areas they believed needed improvement. Russell said that, at one point Presler "chimed in with a couple of things," which made Russell uncomfortable because he did not know Presler's identity; it was only after their discussion that Russell learned Presler was Kane's boss. (Tr. 62–63) And, because they conducted their assessment of the store without him, Russell said he was unable to explain or discuss the alleged discrepancies in real time. Instead, Kane gave his notes of the assessment to Russell and at the conclusion of their discussion said that he was going to put their conversation into a final written warning and present it at a later date. According to Russell, on May 27 Kane handed him the final written warning and said that it was based upon their previous conversation a few days earlier. (Tr. 63) Russell testified that Kane gave him the opportunity to read the document, but said they did not go through the discipline line by line. Russell believed that the tone of his conversation with Kane was still positive and collaborative, but he could tell there was a sense of urgency and seriousness. (Tr.61–64, 318)

Regarding the final written warning, Kane testified that he issued the discipline to Russell because the store "continued to be dirty, and there were failures to his approach." (Tr. 440) Kane said that there were moments of improvement since the written warning that was issued 11 days earlier, but "not improvement that sustained or that was complete." (Tr. 440) In fact, Kane claimed that conditions in the store were worse because "there continued to be more pest debris." When asked what he meant, Kane said there was "pest fecal matter on the walls." (Tr. 440) Kane said that he reviewed the May 27 final written warning with Russell, and "walked through all the pieces of the ops standards and cleanliness and the communication pieces and highlighted the gaps in the approach and job description." (Tr. 440) And, Kane testified that during their discussion he specifically told Russell that failure to correct the behaviors listed in the document could lead to his discharge. (Tr. 441)

Because he knew the discipline was forthcoming, Russell had prepared a written response and he gave it to Kane on May 27. According to Russell, he prepared the document because the May 25 visit with Presler and Kane was unplanned and he felt ambushed or attacked; Russell believed that he was making great improvements and that the final written warning was not warranted. (Tr. 63, 68–69; J. 4)

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In his written response, Russell said that, as a disabled veteran, most of the routines and procedures take him extra time to master. Russell wrote that he had worked very hard to be successful in his duties, putting in 50 to 60 hours per week, which had caused strain/stress on his family and negatively impacted his work/life balance. Russell said he did not feel that he was being adequately or effectively supported and wrote that he was working on an accommodation request, and awaiting documentation from his medical team, but there was no discussion of this

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request during his conversation with Kane and Presler. Regarding Presler, Russell wrote that during the May 25 store visit, Presler’s role was not fully explained, other than being told Presler was there to coach Kane; therefore Russell was uncomfortable having Presler present and participating in the discussion, as It felt more like an attack than a collaborative coaching.

5 Concerning the clean, safe, ready, discrepancies noted in the May 25 visit, Russell wrote that they were never shown to him, nor was he given an opportunity to explain or discuss how to correct them. Russell further wrote that once he was able to assess these areas, the matters were explained by the store’s team and were not actual discrepancies. In his response Russell also complained that Kane’s visits occurred during the busiest times of the day, when employees had  
10 yet to have a chance to clean the areas in question. Also, Russell complained that he was never offered specific assistance, but was just told to ask for help when needed. However, Russell wrote this was an impossible task, as he did not know what or where he needed help; also, as a disabled veteran, anxiety made it difficult for him to ask for help. (J. 4)

15 Kane testified that he disagreed with the entirety of Russell’s written response and said he was surprised when he read it. According to Kane, based upon their interactions, action plans, and conversations, he believed that Russell “knew the gaps” and what needed to be done to close them and get the store clean. (Tr. 442) Kane disagreed with Russell’s statement about not being supported and said that he “spent numerous visits reviewing the opportunities with [Russell],  
20 the—the dirtiness, reviewing the systems to clean them,” and said that he personally cleaned areas of the store and “modeled how to clean the floor.” (Tr. 443) (Tr. 442–444)

### *M. The employee union drive at West Salem*

#### 1. Employees collect authorization cards

25 The employee union drive at the West Salem store started in late April or early May 2023, when Deike reached out to the Union about organizing the store. Then, in May and June 2023, employees circulated and collected authorization cards; both Deike and Barrera were  
30 involved in collecting signed authorization cards from their coworkers. On June 29, 2023, the Union filed a petition in Case 19-RC-320950 to represent the approximately 20 baristas and shift supervisors working at the West Salem store.<sup>10</sup> Barrera estimated that, at least a week before the petition was filed, everyone at the West Salem store know about the union drive. Similarly, Deike believed that “[a]round 20” people at the West Salem store knew about the union drive  
35 before the petition was filed. (Tr. 345) (Tr. 344, 368–369)

At the time the petition was filed, 34 Starbucks locations in Oregon had already filed unionization petitions.<sup>11</sup> And, by June 29, the Union or one of its related affiliates had been certified as the collective-bargaining representative at 29 Oregon based stores.

<sup>10</sup> As agreed to by the parties, I take judicial notice of the petition, tally of ballots, the stipulated election agreement (signed by all parties on 7/20/23), and certification of representative in Case 19-RC-320950. (Tr. 19–20) See *J. S. Abercrombie Co.*, 83 NLRB 524, 524-525, (1949) (Board takes judicial notice of representation proceeding); *Lord Jim’s*, 264 NLRB 1098, 1098 fn.1 (1982) (The Board may take judicial notice of its own files).

<sup>11</sup> See Cases: 19-RC-288594; 19-RC-289812; 19-RC-289814; 19-RC-289815; 19-RC-289816; 19-RC-289817; 19-RC-289854; 19-RC-290060; 19-RC-290145; 19-RC-291410; 19-RC-291441; 19-RC-291712; 19-RC-291713; 19-RC-291714; 19-RC-291715; 19-RC-292093; 19-RC-292533; 19-RC-293238; 19-RC-293851; 19-RC-294288; 19-RC-294563; 19-RC-295057; 19-RC-296544; 19-RC-296545; 19-RC-296755; 19-RC-297141; 19-RC-298772; 19-



When asked whether she had reason to believe that Starbucks management knew about the petition before it was filed, Barrera answered “yes,” saying there were “a couple partners we were worried about,” and there was “a partner at the time whose mom was the store manager.”

(Tr. 370) No evidence was presented as to the identity of the partners in question, the store manager whose son was an employee, or their relationship to the union organizing drive.

Russell did, in fact, know about the union organizing drive before the petition was filed. According to Russell, around June 27 or 28, some of the employees approached him to let him know they were petitioning to unionize the store and that he would be getting official notification soon. The employees explained to Russell that they did not want him to get blindsided, so they were just giving him a heads-up that the petition was coming. The employees also told Russell that, according to the Union, he was not “involved in this” and was to remain neutral. (Tr. 72) Russell assured them that he would absolutely remain neutral. There is no evidence that Russell informed any of his superiors about the petition before it was filed. (Tr. 71–72)

## 2. Kane calls Russell after the petition was filed

Shortly after the petition was filed, Kane and Russell spoke over the phone. Both admit that at least one, if not two, such conversations took place, however their testimony differed about what occurred.

### a. Russell’s testimony

Russell testified that a few days after his conversation with employees about the upcoming unionization petition, he had two telephone conversations with Kane. The first conversation occurred when Kane telephoned Russell’s personal cell phone and asked him to step outside the store;<sup>12</sup> Russell complied, and their conversation continued. During this call, Kane notified Russell that the West Salem store had petitioned to unionize, said they would be receiving an official notice at some point in the near future, and when that occurred Kane would walk Russell through what to do. Kane also told Russell there were training modules on the store iPad that managers needed to review when their store was unionizing. Kane told Russell that, “from here on out, make sure none of our union discussions are in texts or emails, that when we have discussions about the union, we talk in person or we talk over the phone.” (Tr. 72–73) Finally, Kane told Russell to complete the iPad training and call him back to let him know that he had done so. (Tr. 72–73, 302)

According to Russell, after the phone call ended he went back into the store and completed the union training modules on the store’s iPad. Russell said that part of the training included instructions that, as a store manager, he should stay neutral and cannot be part of a union, and he was not to change his management approach. Russell testified the training also

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RC-306378; 19-RC-308209; 19-RC-310429; 19-RC-311308; 19-RC-313564; 19-RC-314002; 19-RC-314637. *Lord Jim’s*, 264 NLRB at 1098. The petitions filed in Cases 19-RC-291714, 19-RC-293851, and 19-RC-296545 were dismissed or withdrawn soon after they were filed; employees voted in favor of unionization, and the union was certified, in the remaining matters except in Cases 19-RC-289817, 19-RC-306378.

<sup>12</sup> Even though he was a store manager, Russell did not have a company provided cell phone. (Tr. 73)

said that he could not solicit input from employees about the union, but if partners asked he could discuss with them his personal experiences regarding unions; Russell did not have any prior experience with unions. (Tr. 73–74)

5 After completing the training, Russell testified that he went back outside and, using his cell phone, called Kane to let him know he had finished the training. During the call, Kane asked Russell if he had any questions, and Russell told him no. Then, Kane asked if Russell knew who was leading the union charge or rallying support for the union in the store. Russell said that this question caught him off guard; he told Kane that he had no idea who had started the  
10 union drive. Kane then asked if Russell “could maybe listen or ask around the store,” to see if he could “find out who led the charge on the store petitioning to unionize.” (Tr. 75) Russell told Kane “no,” and further said that he was supposed to remain neutral as the training had instructed. Russell also told Kane that he would not be listening in on any conversations or asking any union questions, but was going to “stay out of union activities and remain neutral.” (Tr. 75) According  
15 to Russell, Kane became defensive said that he was not asking Russell to “stalk anyone” but to “kind of listen in and maybe start up some of those conversations, and see if you can find out” who was “starting the . . . charge” regarding the union drive at the store. (Tr. 75–76) Russell again responded that he was not going to do that, and was going to remain neutral. Russell testified that Kane again became defensive and said that he was not asking Russell to stalk  
20 anyone but that he wanted him to keep his ears open and keep listening in on those conversations. According to Russell, he once again told Kane that he would not be conducting any of those types of activities, that he was going to “stay out of that,” and remain neutral. Russell testified that he believed Kane again said that he was not asking him to stalk anyone, and that the conversation then ended. (Tr. 75–76)

25 A day or two after their initial conversation, Russell testified that he received the official notice of election that was to be posted in the store and called Kane to tell him that he had received the notice. According to Russell, he was outside the store during this conversation and Kane gave him instructions on how to post the notice; Russell went back into the store, posted  
30 the notice, took a picture of it and texted the picture to Kane. Kane wanted the notice adjusted, so they went back and forth a few times adjusting the notice until Kane was satisfied. According to Russell, Kane then asked if Russell had heard anything from the partners in the store about union activities and “who had kind of started that.” (Tr. 77) Russell told Kane that he had not been listening in on any of those conversations, as he was staying neutral and “out of all that,” as  
35 they had previously discussed. (Tr. 77) Kane then asked if Russell had issued any documented disciplines or documented coaching to employees for time and attendance violations or related issues. Russell responded saying that he had not, as his approach was to primarily do “verbal coachings” which typically handled everything. (Tr. 78) In response, Kane said that “at this time, we need to really start documenting all of those and that the verbals aren’t enough,” so  
40 Russell needed “to start documenting all of those coachings,” and that if he documented it for one person, he needed to document it identically for other similar conduct. (Tr. 78) Kane further told Russell that, prior to issuing the disciplines, he was to send them to Kane for review to ensure they were completed correctly; after Kane reviewed and/or edited the documents, Russell could then issue the disciplines. (Tr. 78) Russell told Kane that he was not going to change his  
45 approach, which he said complied with the training he had received, and he had no intention of starting to document things that he felt did not warrant documentation. During this conversation,

Russell testified that Kane also told him that he needed to start running his schedules by Kane to make sure the store was being staffed correctly. Russell again responded saying this was not something he had done previously, and therefore he did not plan on adjusting his style and procedures “of how we were doing things previously.” (Tr. 78–79) Russell said that Kane was much colder during this conversation; their discussion was not collaborative but instead was along the lines of “this is how you have to do things from here on out,” with a type of “or else” feel. Russell believed that it “was a complete flip in our previous relationship,” and said the conversation “turned very, very cold and very critical.” (Tr. 79) After this conversation, Russell testified that his working relationship with Kane became very distant. (Tr. 77–79)

#### b. Kane’s testimony

Kane denied that, after the petition was filed, he ever asked Russell to find out who the union organizers or supporters were in the store. He also denied asking Russell to watch the partners in the store saying that he “specifically would communicate to not do that.” (Tr. 494)

Kane confirmed having a telephone conversation with Russell about the petition, and said that when he learned about the petition the first thing he did was contact Russell and tell him to “go through this training” which included information on how to communicate in a store that is petitioned or certified. (Tr. 494, 546) Kane testified that he then reviewed with Russell “a couple of things . . . to ensure that we protect the partners’ rights through the petition process.” (Tr. 495) Kane said that he reviewed TIPS and FOE with Russell,<sup>13</sup> and went over some of the changes in processes that occur when a store has petitioned to unionize. Kane said, for example, that a store manager can write a corrective action whenever they wanted, but that partner resources should review those to ensure there was not “anything illegal in that accountability that the store manager was delivering to the team.”<sup>14</sup> (Tr. 495) Kane said that, after Russell completed the training, he had a subsequent conversation with him, but could not recall whether it was in person or over the phone and he could not recall the date of the conversation. Kane denied that he asked Russell to listen in on employees, to surveil them, or to stalk them in the store. (Tr. 495) (Tr. 545–547)

### 3. The election results

Ultimately, the unionization election took place on August 17, 2023. Out of the approximately 20 workers in the store, 17 voted. Of these, all 17 voted in favor of union representation. On August 25, 2023, the Union was certified as the collective-bargaining representative of the West Salem store baristas and shift supervisors.

#### *N. Kane’s 2-on-1 meeting with Barrera*

##### 1. Barrera’s testimony

<sup>13</sup> TIPS and FOE are acronyms sometimes used in the labor relations context; TIPS refers to threats, interrogation, promises, and surveillance/spying, while FOE refers to facts, opinions, and evidence/experiences. *Unifirst Corp.*, 346 NLRB 591, 591 (2006); *Walmart Stores, Inc.*, 368 NLRB No. 24, slip op. at 15 (2019). See also Tr. 496, 525.

<sup>14</sup> Starbucks “uses the nomenclature ‘partnerresources’ instead of ‘human resources.’” *Pasinger v. Starbucks Corp.*, No. 3:07-CV-00452-RCJ-(VPC), 2010 WL 11937167, at \*1 (D. Nev. 2010).

Barrera testified that after the petition was filed, it felt as if Kane was present at the store “a lot more . . . coming in and . . . kind of checking on us.” (Tr. 370–371) Barrera described the atmosphere in the store at the time as “strange.” (Tr. 370) According to Barrera, before the  
 5 petition, she rarely saw Kane in the store. But, after the petition, she said it felt as if Kane was at the store “almost weekly.” (Tr. 371)

Barrera further testified that about a week before Russell was discharged Kane came to the West Salem store with another Starbucks official, who she described as a “training” district  
 10 manager named Nick. (Tr. 371) Barrera said that Kane and Nick pulled employees off the work floor to speak with them individually. According to Barrera, she was pulled outside by Kane who spoke to her “about three different things.” (Tr. 371–372) Barrera said that Nick was present during part of the conversation, but he then stepped away. Barrera testified the first thing Kane told her was that he did not want the conversation to be recorded, as Oregon was a two-  
 15 party consent state. Next, Kane asked if there was anything he could do to make Barrera feel supported, whether there was anything she needed, or “anything that he could change to help us at the store.” (Tr. 372) The last thing Kane discussed was his opinion of unions, saying that if a union was involved in the workplace things are a little bit harder because there is a third party involved versus being able to get help by communicating with him directly. According to  
 20 Barrera, she did not respond to any of Kane’s questions or statements. Barrera testified that she tried to stay very neutral during their discussion; it felt to her as if they were trying to see whether she was for or against the union. When asked how the conversation ended, Barrera said that she just remembered being “pulled back onto the floor.” (Tr. 373) (Tr. 371–373)

Barrera described her conversation with Kane as being atypical, saying that before the conversation she had mostly interacted with Kane only if he was present for a store meeting or shift meeting. (Tr. 374) Barrera said that she was “really anxious,” as she thought her interaction with Kane “was a very strange conversation,” and was worried “that they knew something” regarding her support of the union drive. (Tr. 373) Barrera testified that the baristas and shift  
 25 supervisors at the West Salem store were a close team, so she was concerned the company might transfer someone to separate the team. (Tr. 373–374)

## 2. Kane’s testimony

Kane testified that around July 18, 2023, he met with partners in the West Salem store; with him during these meetings was Nick Palmini (Palmini). According to Kane, he was taking paternity leave starting August 1, and Palmini was assuming the district manager duties while he was on leave. Kane testified that the reason for these individual meetings was to “educate [employees] on the process of what would be happening.” (Tr. 496) When asked to clarify what  
 35 “process” he was referring to, Kane said it was the process “from the filing of the petition to the election. So that we would have the store closed, they’d be able to vote. You know, they can vote whatever way they want.” (Tr. 496) Respondent’s counsel asked Kane whether the process he was referring to involved the “logistics of the election,” and Kane answered “correct.” (Tr. 497) (Tr. 495–497, 523)

Kane said that during the individual meetings he shared with employees “TIPS and FOE” so they would know that he might share his opinions and experiences with them, which was “okay” but there would be no threats, interrogations, surveillance, or promises.<sup>15</sup> (Tr. 496) Respondent’s counsel asked Kane if he had asked partners what issues they were having at the store, and he denied doing so. He also denied asking employees why they filed the petition, and denied promising to remedy problems if the partners voted against unionization. (Tr. 496–497)

Specifically regarding his meeting with Barrera, during cross-examination, the following exchange occurred during Kane’s testimony:

Q [General Counsel] And you, in fact, had a one-on-one with Alicia [Barrera] in July 20th, 2023?

A [Kane] Yes.

Q And the purpose of that was to dissuade her from voting for the Union, right?

A No.

Q Okay. Did you solicit grievances from the partners at the West Salem store?

A No.

JUDGE GIANNOPOULOS: But did you ask them what was wrong, if -- if anything was wrong with the store, if they were having any issues?

THE WITNESS: I have conversations every time I’m in the store.

JUDGE GIANNOPOULOS: That wasn’t my question.

THE WITNESS: I don’t—I’m not sure.

JUDGE GIANNOPOULOS: In those one-on-one conversations, if you remember. Do you remember if you -- if you asked them if -- if they were having any issues or if there was anything going on at the store they wanted you to talk about, anything like that?

THE WITNESS: I -- I remember specifically making statements to the partners so that I would not be at risk of violating the training I had on TIPS. [Tr. 524]

Later, under questioning by the Union’s counsel, the following exchange occurred:

Q [Union’s counsel] So Mr. Kane, you were here yesterday during the testimony of Ms. Flores Barrera, correct?

A [Kane] Yes.

<sup>15</sup> TIPS and FOE are acronyms sometimes used in the labor relations context. *Unifirst Corp.*, 346 NLRB 591, 591 (2006); *Walmart Stores, Inc.*, 368 NLRB No. 24, slip op. at 15 (2019). TIPS refers to threats, interrogation, promises, and surveillance/spying, while FOE refers to facts, opinions, and evidence/experiences. *Id.* See also Tr. 496, 525.

Q Okay. And you heard her testimony about the nature of your conversation with her, correct?

A I did.

5 Q So you would agree that you did ask her what you could do to support her?  
A I don't.

Q You didn't say that?

A I don't remember saying that.

10

Q You have no recollection of --

JUDGE GIANNOPOULOS: Move on. He answered that. Move on. [543] Unless you want to refresh his recollection with something. [544]

15 Q BY MR. BERGER: You did tell her that bringing in a Union would disrupt the direct relationship between managers and baristas, correct?

A I don't remember sharing that, but I remember she shared that I shared an opinion similar to what you said with her. [544]

20 (Tr. 534–544)

### *O. Russell's termination*

#### 1. Store operations after Russell's final written warning

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After receiving a final written warning, Russell said that he felt anxious and stressed, as some of the timeliness were going to be shortened. That being said, Russell still felt empowered and believed the store could meet its goals. Russell believed that he might get transferred to another location if the store did not improve, so he let his staff know that they needed to dig deep and make improvements or he may no longer be their leader. Russell had a conversation with store employees, referenced his final written warning, emphasized the seriousness of the situation, and said they needed to refocus their efforts to make significant improvements. (Tr. 64, 71, 207)

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35 Deike testified that whenever employees saw Kane speaking with Russell, they would ask Russell and he would tell them what was discussed. So, employees knew Russell had received a final written warning. Deike said that Russell stressed to employees that they needed to work harder or clean better because of the final written warning, and this increased the amount of work. (Tr. 351–352)

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On May 31, 2023, Kane sent Russell two emails. The first was sent just after 8:00 a.m. and said “[h]ere are the photos of the cold bar stations for your reference from our time together yesterday. We can leverage these to celebrate improvements or support continued gaps if they exist.” (R. 13) Attached to the email were 40 separate pictures of the store.<sup>16</sup> The photographs show that there were parts of the West Salem store that were dirty, some parts very dirty, and

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<sup>16</sup> Page 230, line 1 should read “One of the depictions” instead of “None o the depictions.”

needed cleaning. They also show that there were parts of the store, with missing grout/tile, rotted wood, or missing/worn caulk, that needed to be repaired. (Tr. 214–215, 453–480; R. 12, 13, 32)

5 Russell testified that the pictures were taken while he and Kane were going through the store, sometimes on their hands and knees using flashlights, “crawling underneath stuff,” and pulling equipment out so they could look at the walls. Russell said he had not previously done anything like this at the store, that Kane was “showing me stuff,” and would take a picture of it for later reference. To Kane, based upon the pictures, it did not appear that the store was cleaned  
10 weekly as of a clean play. (Tr. 217–218, 474)

The second email Kane sent to Russell on May 31 has a subject “CSR notes from today’s visit.” (R. 12) According to Kane, the email served as a recap of a station assessment that he performed with Russell at the West Salem store, where they reviewed the store to see what parts  
15 could be cleaner. Kane testified that station assessments are supposed to be completed every morning in the store. In the email Kane asked that Russell provide a timeline for “station assessments to be executed and stations to be clean,” along with a “timeline to be pest free.” (R. 12) Russell responded giving an estimated date of June 12. (Tr. 449; R. 12)

20 On May 31, 2023, Sasha Belden (Sasha) sent Kane and Russell a calendar appointment for a meeting at the West Salem store on June 6, along with a message saying that she intended “to review facilities processes, standards and do a condition walk for your store.” (R. 14) Sasha held the position of facilities manager. According to Kane, Sasha visits each of her assigned stores annually for an assessment, and also gets involved when there is an extreme issue, or when  
25 there is maintenance work that needs to be completed. Sasha is able to dispatch necessary work orders to vendors as needed. (Tr. 254–255, 480; R. 14)

Sasha visited the West Salem store on June 6, 2023, as scheduled. Russell testified that Sasha walked the store and pointed out items that needed to be repaired, so the store could be  
30 cleaned properly. According to Russell, Kane was present during Sasha’s walkthrough. For his part, Kane could not recall if he was present when Sasha visited the store. But, on June 6, just before 10:00 p.m., Kane sent Russell an email saying that he wanted to “pass along my notes from my time in the store today.” (R. 15) In the email Kane discusses things they reviewed, his observations, and said that Russell was to provide an “action plan based on the food safety  
35 manual direction,” later that week. (R. 15) The next day, Russell emailed Kane his “short term clean, safe, and ready action plan with a dedicated focus and effort on eliminating the pest population.” (R. 16) (Tr. 256–257, 265–267, 481–484; R. 15, 16)

40 On June 8, 2023, Sasha sent Russell and Kane a calendar appointment for June 22, saying that she would be at the West Salem store “to chat about facilities processes and progress on cleanliness.” (R. 18) It is unclear from the record whether this meeting occurred. (Tr. 282–283; R. 18)

45 Eventually Sasha arranged for a cleaning service to clean the floors at the West Salem store, dust parts of the ceilings, power-wash some of the outside surfaces, wash the windows, and repair/replace the caulking and tile grout. Regarding the floors, Russell testified that during

Sasha’s walkthrough, she identified repairs that needed to be made to the tile grout and said that it would take multiple attempts to fix properly because the grout was so deteriorated. However, before the grout could be repaired, a professional cleaning service needed to perform a steam-type cleaning on all the floors. A contractor was hired, and the floors were cleaned one night while the store was closed. On June 17, 2023, Sasha emailed Kane and Russell saying that the “[d]eep cleaning and high dusting” has been completed. (R. 17) Sasha also wrote that she spoke to Presler “yesterday and we are looking forward to hearing the sustainment plan next week during your store visit.” (R. 17) Sasha attached to the email a series of pictures showing the floors at the West Salem store, both before and after the professional cleaning. (Tr. 271–281, 323–325, 484–486; R. 17, 19, 33)

On June 18, the drains at the West Salem store became clogged resulting in flooding. A work task was submitted from the store at about 5 p.m. The next day Sasha contacted a plumbing contractor and asked if they were available to address the matter that morning because the store was unable to open as the drains were continuing to overflow. (Tr. 314–315; GC. 9)

On June 20, 2023, at 8:53 p.m., Sasha sent Kane an email with the subject “Facilities Support Consultation Report–Store #9611–Wallace & Glen Creek–Salem.” Attached to the email was a copy of the report. The email states that the “Date of Consultation” was June 20, 2023, at “20:47:54” or 8:47 p.m., about six minutes before the email was sent. The email contains the following “Summary Notes” quoted from the report: “Follow up visit from Q1 Pest Report/FSA Action Plan did not show improvements. Validated more work and cleaning standards for clean play. Rescheduling store condition visit and process review for June 22nd after extending the action plan through June 30.” The email ends with Sasha asking Kane to contact her with any questions. (R. 34)

The report attached to Sasha’s email is 19 pages long, says that the review was conducted by Sasha, and that the “Ops” consultation contacts were Kane and Russell. The report lists 89 separate “elements” or sections that were reviewed, broken down within the following categories: Back of house (22 elements); Café (12 elements); Drive-thru Lane (5 elements); Engine (20 elements); Engine Layout–Espresso Station (5 elements); Engine Layout–Brew Station (3 elements); Parking Lot (1 element); Patio (3 elements); Restroom (8 elements); Site (4 elements); and Other (6 elements). Under each section the report contains the “element name,” and the “action needed from facilities.” (R. 34) Not every element/section contains a notation. The report contains “action needed” notations and/or pictures for the following elements/sections:

#### A. Back of House

- Dishwasher: “Dirt and debris inside.”
- Ice Machine: “Missing screws and needing cleaned / replaced [sic].”
- Compartment Sink: “Legs of 3 comp sink have dirt and debris that promote pests.”
- Mop Sink: A picture of the mop sink showing the mops stored with the mop heads in the sink, and the following notation— “Silicone needed, store the mops up not down, tie off towels and mops that are dirty.”



- Ceiling: A picture of a ceiling corner, and the following notation— “High dusting and small flies.”
- Doors: A picture showing the door bottom section of a door, kickplate, and part of the floor, with the following notation —“Door thresholds / hardware are covered with debris and stickiness that draw pests.”
- Fixtures: A picture of the ceiling with what appears to be two fly strips/ribbons hanging from the ceiling.
- Flooring: Four separate pictures of the floor in the back of house and the following notation—“Grout needed, dirt, debris, standing trash, mops head [sic] down in sink, product on floor.”
- Safety: “No access to back door due to trash.”
- Walls: A picture of a three-compartment sink, the wall behind the sink, and the following notation—“Flies breeding on walls.”

#### B. Café

- Dishwasher: “Dirt and debris inside.”
- Ceiling: Picture of a ceiling with track lighting and the following notation— “High dust.”
- Flooring: Picture of floors behind a counter and the following notation—“Deck scrubbing needed.”

#### C. Engine

- Food case: “Crumbs inside and the coil cover is full of debris.”
- Cabinetry: “Silicone task made.”
- Ceiling: “Dusty.”
- Flooring: Three pictures of different parts of the floor and the following notation—“Debris and grout needed. Hardware attaches to the floor is covered in sticky debris. Partners need schedule for clean play.”
- Walls: Three different pictures of walls with the following notation—“Grout at back splash has debris and sticky.”

#### D. Engine Layout–Brew Station

- Grinder: Picture of a grinder with the following notation—“Clean the grinder according to the clean play.”
- Brewer: Picture of part of the brewer with the following notation—“C cups need cleaning to clean play.”

#### E. Patio

- Fixtures: “Clean walls and light fixtures. Trim the trees so the branches don’t touch the roof.”

#### F. Restroom

- Flooring: Picture of a floor drain with the following notation—“Floor drains need cleaned.”

## G. Site

- Building Exterior: “Power wash building and patio. Remove loss [sic] from umbrellas.” (R. 34)

5 Kane said it was his understanding that the report was prepared on June 20, three days after the deep cleaning had been completed. However, no explanation was made as to how he came to this understanding. Kane testified that he may have been present when the pictures in the report were taken, but was not sure. (Tr. 487–489)

10 On June 22, 2023, Sasha sent an email to Russell and Kane. In the email, Sasha thanked Russell for their discussion that day on his clean play schedule, along with the “facilities condition and processes.” (R. 19) Sasha suggested that they circle back in July or August, at a time when Kane was scheduled to be in the store, to check on the progress and maintenance. Shasa further wrote that: the professional cleaning has been executed; a contractor would be  
 15 replacing the cove base tile, grout, and the silicone that evening; and that it might take two nights to complete. In the email Sasha recommended that the store add an additional dumpster trash run to reduce the standing trash, noting the store was currently doing two trash runs a day and that the dumpster was far away. Finally, Sasha asked that Russell add digital tickets to, among other things, rodent proof the back door, address pooling water in front of the back door as it  
 20 draws pests, and to have the bushes around the store trimmed to reduce hiding places for pests. On June 26, Russell replied to Sasha and Kane telling them that the caulking in the store had been completed. Kane responded on June 27, asking “[w]hat was the professional cleaning;” Sasha replied writing, “exterior power washing, window washing, and high dusting,” tile cleaning for the back of house, engine, and, café, and a contractor adding grout to those areas.  
 25 (R. 21) In a separate email on June 26, Russell informed Sasha and Kane that all the work orders had been submitted, the broken tiles were replaced, the broken pastry rack was fixed, and that the contractor had started working on the grout but would return to finish. (R. 19, 20, 21) (Tr. 289, 323–325)

30 Regarding Sasha’s recommendation that the West Salem store do three trips to the dumpster, instead of two, Russell said they tried implementing this practice but could not do it consistently, as they had to wait until there were no cars in the drive-thru lane. They also had to wait for a time when business so an employee was free to make the extra trash run. (Tr. 285–286)

35 On June 28, 2023, at 7:53 a.m., Kane sent Russell a Microsoft Teams meeting appointment asking that Russell “schedule a roundtable” with the store’s shift supervisors on July 18, from 2:30 p.m. to 4:00 p.m., saying that he would “love to generate some 2 way dialogue with them to see where I can support you and the team differently.” The appointment  
 40 contained a link to join the virtual meeting, along with the meeting’s passcode. About an hour later, Kane emailed Russell saying that it “could be great to join your [sic] for a SSV meeting ahead of that time too!” Russell responded asking if Kane wanted to meet at 2:30 p.m. and then have the shift supervisors join at 3:00 p.m. Kane replied that he thought Russell should lead a shift supervisor meeting and Kane would “connect with them for a roundtable afterward.” (R.  
 45 23; GC. 10) Despite these emails, Kane testified that, at the time, he had already made the

decision to recommend that Russell be fired and said he had nothing in mind regarding ways he could support Russell staying in his position as store manager. (Tr. 551–552)

## 2. Kane asks for a consultation on Russell’s termination

On June 28, 2023, at 8:46 a.m., Kane sent an email to Robyn Dold (Dold) saying that he was submitting a “separation consult” for Russell to the partner resources support center “today.” (R. 35) Kane testified that Dold was the partner resources manager who was his “HR support.” (Tr. 489) In the email, Kane attached multiple documents, emails, and pictures, including Russell’s May 2023 disciplines. He also included a rough draft of a separation notice for Russell and wrote to Dold that in the draft notice “you can see the steps since the final was delivered to support his success.” (R. 35) Kane further wrote that, since Russell’s final warning, “there have been multiple plans of action,” and facilities support, but the pest issue has not been eliminated and they continue to find places where the store could be cleaner. (R. 35) Kane noted that Russell “is in multiple protected classes,”<sup>17</sup> and asked for the perspective from a Starbucks attorney named “Jim” on “where we are and if we should take other steps before separation.” (R. 35) Kane testified that he did not always submit drafts of documents to partner relations for their review, but he did so for Russell. According to Kane, he did not know about the union organizing drive at the West Salem until either June 29 or June 30, after the petition was filed, and after he submitted the separation consult. (Tr. 490–494, 518–519, 540–541, 554; R. 35–36)

Regarding the email to Dold, Kane testified that whenever a store manager is going to be fired “we connect with our HR” to ensure that all appropriate steps have been taken to support the store manager’s success and that the decision is consistent with “what we do with store managers across the country.” (Tr. 492–493) When asked about his statement in the email inquiring as to whether they “should take other steps before separation,” Kane said he was thinking about the potential of issuing Russell an updated final written warning, instead of termination. (Tr. 543) Kane testified that he has had occasion to issue an updated final written warning, in lieu of termination, even though he had already started the process of requesting a separation consultation. According to Kane, he was not trying to find a reason to fire Russell. But, Kane said that he was the one who was ultimately accountable for a store manager’s success and it was evident to him that Russell was not going to be able to achieve and maintain the store’s cleanliness. (Tr. 492–493, 541–543)

Respondent’s records show that an electronic “Partner Relations” case file on Kane’s separation consultation to discharge Russell was opened on June 28, 2023. The case file states that the “first contact” was made on June 29. The case file contains a box that says “Union Mention;” in that box is typed “Petitioned Store.” (GC. 14) The case file also contains a “Comments/Worknotes” section. In this section it says that Kane initiated a “Performance Management Consultation request” on June 28, and it shows that the matter was assigned to Linda Diaz (Diaz), a partner relations employee in the “PR SPRA West” assignment group, on the same date. (GC. 14)

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<sup>17</sup> Regarding this phrase, Kane testified that he was referring to Russell’s age, status as both a military veteran and disabled veteran. (Tr. 554)

On June 29, Diaz sent Kane an email regarding Russell, with a copy to Presler and Dold, that reads as follows:

Hello Michael,

Thank you for reaching out to Partner Relations regarding SM Wade Russell. To ensure clarity on the situation, were there any other performance and or policy concerns occurring outside of the infestation when the FWW was delivered? If so, was a PIP considered? If no, Why? Thank you, (GC. 13)

During his testimony, Kane confirmed that “PIP” referred to a performance improvement plan, but there was no evidence presented that Kane replied to Diaz, or answered the questions posed in her email as to whether a PIP was ever considered. (Tr. 511) Respondent’s Partner Relations case file shows that Diaz was the partner relations official working on Russell’s separation consultation until July 6, when the matter was reassigned to Jennifer Durham (Durham), a partner relations consultant in the “PR Labor Relations Consultants” assignment group. The record is silent as to why the case was transferred from Diaz to Durham; it is also silent about the difference between the two assignment groups. Under a header with Durham’s name, the “Comments/Worknotes” section of the electronic case file shows that Russell’s notice of separation was being prepared on July 11, 2023, that Russell’s separation was “recommended” on July 13, and that the case was closed on July 24, after a signed notice of separation was received. (GC. 14)

On June 30, 2023, Russell emailed Kane saying that he was glad Kane was “able to visit with the team yesterday,” and asked if there was anything he needed to follow up on, as employees were “pretty vague” about the visit. (GC. 11) Kane replied saying that he had some time free up on his calendar and wanted to solicit the team’s input on the pest and cleanliness progress and morale. Kane also suggested that Russell consider input from two specific employees as he formed his next plan on pests in the store. On July 1, Kane sent Russell an email with a subject line that read “few things.” (R. 22) In the email Kane asked about operational issues, and whether there were any “planned next steps for the pests.” Russell responded saying that his plan for the pests included to continue cleaning thoroughly, with follow-up station assessments, and to use support positions throughout the day. Russell also noted that he ordered new mats, a trash can, a mop bucket and cleaning supplies. With respect to this email, Kane testified there was nothing that Russell could have said with respect to his plan for attacking the pest problem at the store that would have changed his recommendation that Russell be fired. (Tr. 525–526, 553; GC. 11; R. 22)

On Wednesday, July 12, 2023, Kane emailed Durham, with a copy to Dold and Presler, thanking Durham for her time “yesterday,” saying that he updated Russell’s notice of separation, and included the pest reports along with Russell’s self-assessment. (GC. 20) Kane asked Durham to share any edits, recommendations, or anything else that would be helpful, and said that he was planning “on having this conversation Monday morning,” which would have been July 17. Durham replied on July 13 and attached a revised notice of separation. In her email Durham wrote, “[a]ttached is a revised, reviewed version of the NOS” for Russell. Durham asked that Kane “add verbiage” about Russell’s written warning and told him to send it back to

her for “one final review.”<sup>18</sup> (GC. 20) On July 14, at 8:59 a.m., Kane sent Durham, Dold, and Presler an email and attached an updated notice of separation for Russell writing, “[h]ere is the update for your review.” (GC. 19) This draft includes the following statement, which was not included in the earlier draft:

On 7/14/23 the district manager observed continued significant fly activity, dirty floors and debris demonstrating a failure to ensure cleanliness and food safety systems are used to keep the store clean, safe and ready to serve customers.

Kane testified that he was at the Glenn Creek store on July 14, but did not testify as to what time he arrived at the store. Nor did he explain how he observed the store, edited the discharge document, and sent an email to Durham, by 8:59 a.m. (Tr. 522, 538; GC. 18, 19, 20)

On July 11, 2023, Kane sent Russell a calendar appointment for a meeting on July 18, at another Starbucks location in Salem located on Commercial street writing “I’ve started having one on one’s with the team and wanted to get together to discuss planning.” (GC. 6) On July 14, Kane sent Russell another calendar appointment, with the same notation, but setting the meeting for July 17, at the same store on Commercial street. (GC. 12) It is unclear from the record whether Russell responded to either request.

### 3. Russell is fired

The morning of July 17, Kane and Durham exchanged a series of emails. Kane emailed Durham, with a copy to Dold and Presler, asking for “advice” because Russell had messaged him that morning saying he had taken his wife to the hospital. In the email Kane wrote that he was supposed to meet with Russell that day for “the separation conversation,” but said he was thinking of putting it off until the next day and asked for Durham’s perspective. (GC. 16) Durham replied saying that, considering the situation, Kane should hold off until he heard back from Russell; Durham asked Kane to keep her “posted” and said that she would “loop in Jim.” (GC. 16) Kane responded saying that he sent an “MSS form to change the date since it was already processed for today,” referring to Russell’s discharge. Later that morning, Kane emailed Durham, with a copy to Dold and Presler, saying that Russell’s wife was going into surgery and that he would likely be out for days; Kane asked whether he should “rescind the separation” and adjust the date. (GC. 15) Durham replied recommending that Kane wait until Russell “gets back in the business,” and saying that he should “rescind and hold off on a date until we have more information.” (GC. 15) Kane testified that Russell’s discharge was delayed for two reasons, “number one, we want to have those conversations in person,” and two “his wife’s in the hospital. It would be outside of our—our mission and values to do. There’s no risk in waiting till he returned to work to have that conversation.” (Tr. 493)

The record contains the Manager Self Service (MSS) electronic form with details regarding Russell’s termination, which Kane referenced in his July 17 email to Durham. The form states that it is to be used whenever “corrections are to be made that cannot be withdrawn.” The MMS form notes that Russell “called out on separation date moving back conversation one

<sup>18</sup> The record also contains another draft of Russell’s notice of separation. (GC. 18; Tr. 522) This draft, along with the draft Durham sent on July 12, lists the discharge document as being delivered on July 11, 2023.

day.” The MSS form also states that Kane, Presler, and Dold, all approved the decision on July 17, and that Russell was involuntarily separated due to deficient performance, with an effective date of July 18, 2023. (Tr. 514–515; GC. 17)

Russell testified that his wife was admitted to the hospital on Sunday, July 16, and that he called Kane to let him know he would not be coming into work the next day. According to Russell, Kane told him not to worry, and that he had someone in mind to help cover the store. On July 21, Kane sent an email to Durham, with a copy to Doud, Presler, and someone named Michaela, saying that Russell had “communicated that he would be returning to work Monday,” in the email Kane also wrote that he was planning to have the “separation conversation” with Russell upon his return. (GC. 21) Russell testified that when he called Kane to say he would be returning to work on Monday, July 24, Kane asked him to stop at the Starbucks store on Commercial street for a discussion before going into the West Salem store; Russell agreed to do so. (Tr.82–84; GC. 21)

According to Russell, on July 24, he went the Starbucks store on Commercial street, as directed, and the store manager pointed him to the back of the house where Kane was sitting with Palmini. Russell testified that, after a quick discussion about his wife, Kane presented him with a separation notice and said “unfortunately, this is going to be your last day.” (Tr. 84–85) Kane then asked for Russell’s laptop and gave him information about COBRA benefits. (Tr. 84–85, 493–495; J. 3)

The notice of separation, which was signed by Kane, Russell, and Palmini (acting as a witness) is dated July 24, 2023. The document contains a box that reads, “Manager’s statement: Describe the circumstances that led to the decision to separate the partner from employment.” In this box, the discharge notice reads as follows:

This document is to serve as a notice of separation for store manager Wade Russell for failure meet Store Manager expectations, including ensuring cleanliness and food safety systems were utilized to keep the store clean, safe and ready to serve customers.

On 5/6/23 the district manager delivered a written warning for Staffing and Scheduling, Operations Standards, and communication as outlined in the Store Manager Approach and store manager job description; significant cleanliness and pest gaps were sited [sic] in this conversation and document.

On 5/27/23 the district manager delivered a Final Written Warning for failures in Operations Standards regarding cleanliness and pest activity that had been observed on 5/24/23 after multiple timeline commitments to have the store clean, food safe and ready to serve customers. In the connection on 5/24 Wade had communicated that the district manager would be able to observe the store clean safe and ready on 5/27/23. The store was not clean or pest free on 5/27/23.

On 5/30/23 the district manager and Wade reviewed the expectations and resources for the customer support cycle, clean play, and operations station use

and completed a station assessment together reviewing the guidelines in the daily records book and the Steps to Excellence. On this visit the district manager observed significant cleanliness gaps and pest presence as well as pest waste material.

5

On 5/31/23 the district manager provided Wade pictures from the visit showing cleanliness gaps, pest activity and pest waste material.

10

On 5/31/23 via email Wade communicated with the district manager that station assessments would be completed successfully, and the store would be insect free by June 12th.

15

On 6/6/23 the district manager and Wade reviewed the Clean, Safe, Ready system check to ensure Wade's comfort and confidence on the checklist; as well as reviewed the action steps in the Food Safety Manual pages 40-42, for eliminating gnats and flies. During the visit visible debris was evident on the walls from insects, mop sink was dirty with mops stored incorrectly, build up was visible under the cabinets.

20

On 6/7/23 Wade provided a plan of action to eliminate flying insects by June 17th.

25

On 6/27/23 the district manager and Wade observed the considerable flying insect issue continued.

Prior to 6/27/23 Facilities completed [e]xterior power washing, windows and high dusting; back of house, engine and café tile cleaning.

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On 7/14/23 the district manager observed continued significant fly activity, dirty floors and debris demonstrating a failure to ensure cleanliness and food safety systems are used to keep the store clean, safe and ready to serve customers.

Other timelines of note:

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On 1/15/23 Wade communicated in email to the district manager that he was owning in all dimensions of the SM approach including Ops Standards and Continuous Improvement which states "Ensures cleanliness and food safety systems are used to keep the store clean, safe and ready to serve customers." Systems include operations station cards and their use.

40

On 2/23/23 Wade shared his Period Plan for Spring discussion guide which including [sic] the completion of the Clean, Safe, Ready system check.

As communicated in the job description a store manager:

45

- Provides coaching and direction to the store team to take action and to achieve operational goals. Constantly reviews store environment and key business

indicators to identify problems, concerns, and opportunities for improvement to provide coaching and direction to the store team to achieve operational goals.  
 - Drives the implementation of company programs by developing action plans and directly motivating and instructing the store team to implement them to meet operational and organizational objectives.

As communicated in the SM Approach:

- Ensures cleanliness and food safety systems are used to keep the store clean, safe and ready to serve customers.

As communicated on pg. 50 of the Partner Guide:

“Store managers are responsible for administration of the safety program within the store as well as the correction of safety hazards, supported by field management and the Global Safety and Compliance team at Starbucks Support Center.”]

This includes the execution of practices as outlined in the communicable disease resources which requires all partners to complete the Partner Check Tool at the beginning of their shift and have the shift supervisor validate the partners ability to work.

For the above stated reasons, SM Wade’s employment with Starbucks is ended effective immediately. (J. 3)

On cross-examination, when asked whether there were any reasons for Russell’s termination that were not listed in the notice of separation, Kane answered “no.” (Tr. 538) Regarding the part of the document discussing his observing “fly activity, dirty floors and debris” on July 14, the following colloquy occurred during Kane’s cross-examination testimony:

Q. [General Counsel] Okay. And you relied on your observations of the store on that day as one of the grounds for separating Mr. Russell, correct?

A. [Kane] I had already printed the recommendation to separate, but I would continue to observe that the store was dirty on that day, as well, yes.

Q So the answer to my question is, yes, your observations on that day, July 14th, were one of the reasons for his separation?

A No. All the reasons before that day were when I had initiated the request to separate.

Q Well, you see at the top of the page there’s something that says manager statement. And then it follows, “Describe the circumstances that led to the decision to separate the partner from employment.” Did I read that accurately?

A You did.

Q Okay. So then this document would not be completely accurate?

A I would disagree with that.



Q You would disagree. You think the document is completely accurate?

A I do.

Q Okay. So was the event -- your observations on July 14th, one of the circumstances that led to the decision to separate him?

A No.

(Tr. 539–540)

*P. Respondent's discipline of other store managers*

The record contains some testimony, but little to no other evidence of comparative disciplines meted out to other company store managers. Kane referred to firing store managers as them having been “involuntarily separated;” he testified that in his current district four store managers were involuntarily separated and said in his previous district it was “probably twice that number.” (Tr. 384–385) Other than Russell, no documentary evidence was entered into evidence about the reasons for any of these discharges.

As for the West Salem store, other than Russell, there is no evidence that any other West Salem store manager was disciplined, let alone discharged, because of cleanliness or pest issues. This is true even though the record shows that the pest/cleanliness problems in the store pre-date and post-date Russell's tenure. No testimony or documentary evidence was introduced into evidence as to Ashley's disciplinary history. Regarding Christian, who served temporarily as the West Salem store manager for two months until Russell took over, Kane admitted that there were cleanliness problems at the store during Christian's tenure, and the record shows there were pest issues at the store as well. Christian did not receive a written discipline for these issues. Christian did receive a “coaching conversation” based upon a complaint made by an employee who said Christian told her that she “reminded them of a previous girlfriend.” (Tr. 536) Under cross-examination by the government, Kane was asked whether the complaint involved claims of sexual harassment, and he answered “[y]our words. They were a complaint on the communication.” (Tr. 536) When asked how the employee characterized the complaint, Kane replied saying he did not “remember what words they used,” even though he was the one who investigated the incident. (Tr. 536) Kane testified that he also issued Christian a written warning for “time and attendance and communication.” (Tr. 537) Notwithstanding, at some point Christian interviewed for and was awarded a store manager position at a different store, under a different district manager. Eventually, it appears that Respondent fired Christian for cause. (Tr. 343–344, 354–360, 533, 535–537; GC. 4, 22; R. 31)

As for Laura, the store manager who took over after Russell, and worked at West Salem until about June 2024, Kane admitted that she was not terminated because of flies in the store. Otherwise, there is no record of whether Laura received any discipline, whether she left the West Salem store on her own accord, or whether she still worked for Starbucks at the time of the hearing. And, after August 1, 2023, Kane was no longer responsible for overseeing the West Salem store. Therefore, at most, Laura worked under Kane's direction for a few weeks. (Tr. 347, 533, 555)

## II. ANALYSIS

*A. Solicitation of Grievances*

5       The government alleges that, after the petition was filed, Kane unlawfully solicited employee grievances, with an implied promise to remedy them, during his meeting with Barrera in the West Salem store. The testimony of Barrera and Kane differ as to what occurred during their meeting. Between the two, I credit Barrera.

10       Reviewing her demeanor at trial, I viewed Barrera to be a very credible witness who was trying hard to answer each question honestly. As for Kane, I found Kane him to be more interested in protecting the company's legal position; he was evasive when key questions were posed to him and rather than giving direct and forthright answers, many times he resorted to answering in "corporate speak." For example, he referred to an employee discipline as an  
 15       "accountability" and to people being fired as being "involuntary separated." (Tr. 384–385, 495) Instead of just admitting that the West Salem store was already dirty when Russell was assigned to take over as the store as the new manager, Kane testified that "there was a degree of cleanliness opportunity when [Russell] stepped in to lead the store." (Tr. 392) Also, during his testimony about the meeting with Barrera, when asked by me whether he asked partners at West  
 20       Salem if there was anything wrong with the store or whether they were having any issues, instead of giving a direct answer Kane replied "I have conversations every time I'm in the store." (Tr. 524) When asked if he remembered whether he asked employees if they were having any issues or if there was anything going on at the store they wanted him to talk about, again instead of giving a direct answer, Kane replied saying "I remember specifically making statements to the  
 25       partners so that I would not be at risk of violating the training I had on TIPS." (Tr. 524)

      Also, regarding the individual meetings with employees at the store, Kane testified that the reason for these meetings was to go over the process involving the logistics of the election. (Tr. 497) And, in an email a July 11 message to Russell, Kane wrote that he has started "having  
 30       one on one's with the team." (GC. 6) However, the stipulated election agreement, setting forth the logistics of the election, was not signed until July 20. There was no explanation as to why Kane would have individual employee meetings starting July 11 about the logistics of the election before the stipulated election agreement, finalizing those logistics, was even completed. In sum, I do not credit Kane's testimony about what occurred, or the reason for the individual  
 35       meetings, and find that the meeting with Barrera in mid-July occurred exactly as she testified. Barrera was pulled off the work floor to speak with Kane and Palmini, who was present for only part of the conversation. Kane told Barrera that he did not want the conversation to be recorded, as Oregon is a two-party consent state. Kane then asked Barrera if there was anything he could do to make her feel supported, whether there was anything she needed, or anything that he could  
 40       do to help employees at the store. Then Kane discussed his opinion of unions, saying that if a union was involved in the workplace things are a little bit harder because a third party is involved, as opposed to employees being able to get help by communicating directly with him.

      I also credit Barrera's testimony that her conversation with Kane that day was atypical,  
 45       and that prior to petition, she mostly interacted with Kane if he was present for a store meeting or shift meeting. In fact, there is no credited evidence that, prior to the petition, Kane had a practice

of directly asking employees at West Salem if there was anything he could do to make them feel supported, if there was anything they needed, or if there was anything he could do to help them. And, there is no evidence that, prior to the petition, Kane ever had individualized meetings with partners at West Salem.

5 “[A]bsent a prior practice of doing so, an employer’s solicitation of grievances during a union campaign, accompanied by a promise, express or implied, to remedy such grievances, creates an inference that the employer is promising to redress the problems.” *Register Guard*, 344 NLRB 1142, 1143 (2005). The General Counsel does not need to show that the solicited  
 10 grievances were, in fact, remedied. *Capitol Emi Music*, 311 NLRB 997, 1007 (1993), enfd. 23 F.3d 399 (4th Cir. 1994) (that employer does not make a commitment to specifically take corrective action does not abrogate the anticipation of improved conditions expected for the employees involved). Instead, the “solicitation of grievances in the midst of a union campaign inherently constitutes an implied promise to remedy the grievances.” *Clark Distribution*  
 15 *Systems*, 336 NLRB 747, 748 (2001). While the inference that an employer is going to remedy the grievances it solicits during a preelection setting is rebuttable, *Capitol Emi Music*, 311 NLRB at 1007, here no evidence was offered that would rebut the presumption. Just weeks after the petition was filed, Kane asked Barrera if there was anything he could do to make her feel supported, whether there was anything she needed, or anything that he could do to help  
 20 employees at the store. There is no evidence that Kane, or any of Respondent’s officials, had a previous practice of asking employees these types of questions at West Salem. Kane’s questions, coming soon after the petition was filed, implied that Respondent would remedy whatever grievances were brought to his attention and constituted a violation of Section 8(a)(1) of the Act. *Royal Manor Convalescent Hosp., Inc.*, 322 NLRB 354, 363 (1996), enfd. mem. 171 F.3d 1178  
 25 (9th Cir. 1998) (Unlawful solicitation of grievances where, prior to the election, company president asked employee if there was “anything I could do to make things better or anything that needs to be improved at the facility.”); *NLRB v. Inter-Disciplinary Advantage, Inc.*, 312 F. App’x 737, 747 (6th Cir. 2008) (Unlawful solicitation of grievances where employer’s agent asked workers if there was anything the company could do to improve the workplace or their  
 30 enjoyment on the job).

### *B. Russell’s discharge*

#### 1. Legal Standard

35 An employer may not discharge a statutory supervisor for refusing to commit unfair labor practices, as such conduct interferes with the exercise of employee Section 7 rights in violation of Section 8(a)(1) of the Act. *Parker-Robb Chevrolet, Inc.*, 262 NLRB 402, 403 (1982), enfd. 711 F.2d 383 (D.C. Cir. 1983). If the employer asserts that the supervisor was actually  
 40 discharged for cause, to determine whether a violation has occurred the Board uses the burden shifting framework as set forth in *Wright Line*.<sup>19</sup> *Casa San Miguel, Inc.*, 320 NLRB 534, 546 fn. 14 (1995) (using *Wright Line* to determine whether the discharge of a statutory supervisor violated Section 8(a)(1) of the Act); *Professional Medical Transport, Inc.*, 346 NLRB 1290, 1298 (2006) (same). Under *Wright Line*, the General Counsel first bears the burden of

<sup>19</sup> See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983).

persuasion to show that animus against protected activity contributed to the employer’s decision. *Acumen Cap. Partners, LLC v. NLRB*, 122 F.4th 998, 1003 (D.C. Cir. 2024). This burden is met by establishing that: (1) the employee engaged in protected activity; (2) the employer had knowledge of the employee’s protected activity; and (3) the employer harbored the requisite animus. *Id.* Once established, “at the second step the burden shifts to the company to show that it would have taken the same action in the absence of the unlawful motive.” *Id.* (cleaned up) An employer cannot simply present a legitimate reason for its action but must show by a preponderance of the evidence “that it *would* have taken the challenged adverse action in the absence of protected activity, not just that it *could* have done so.” *Rhino Northwest, LLC*, 369 NLRB No. 25, slip op. at 3 (2020). *Id.* (italics in the original) Where an employer’s explanation is “pretextual, that determination constitutes a finding that the reasons advanced by the employer either did not exist or were not in fact relied upon.” *Limestone Apparel Corp.*, 255 NLRB 722, 722 (1981), *enfd.* 705 F.2d 799 (6th Cir. 1982). Also, where the “proffered non-discriminatory motivational explanation is false even in the absence of direct motivation the trier of fact may infer unlawful motivation.” *Roadway Express*, 327 NLRB 25, 26 (1998); *Transportation Mgt. Corp.*, 462 U.S. 393, 399–403 (1983).

## 2. The General Counsel’s prima facie case

### a. What occurred during the post-petition phone calls between Kane and Russell

To determine whether Russell engaged in protected activity by refusing to commit unfair labor practices, what occurred during the telephone calls between Kane and Russell, just after the union petition was filed, must first be established. Their testimony differed significantly about what occurred. Examining their demeanor at trial, between the testimony given by Kane and Russell on this issue, I credit Russell.

As noted earlier, I found Kane to be evasive when posed with key questions, and he resorted to “corporate speak” as opposed to giving direct and forthright answers. Also, Kane was evasive and sparred with the General Counsel when asked to explain the comment in Russell’s separation notice discussing his asserted observations of the West Salem store on July 14, 2023. The separation notice asks for a description of “the circumstances that led to the decision to separate the partner from employment.” In this part of the form, among other matters, Kane included a comment saying that on July 14, he “observed continued significant fly activity, dirty floors and debris demonstrating a failure to ensure cleanliness and food safety systems are used to keep the store clean, safe and ready to serve customers.” (J. 3) When the government asked Kane whether he relied upon this July 14 observation as one of the grounds for separating Russell, instead of answering the question directly Kane said “I had already printed the recommendation to separate, but I would continue to observe that the store was dirty on that day, as well, yes.” (Tr. 539) When the General Counsel followed up, asking “[s]o the answer to my question is, yes, your observations on that day, July 14, were one of the reasons” for Russell’s discharge, Kane answered saying “[n]o. All the reasons before that day were when I had initiated the request to separate.” *Id.* Based on this answer, the General Counsel then asked Kane if he would agree that the notice of separation was “not completely accurate,” noting that the document asked for a description of the circumstances that led to the decision to discharge Russell. Kane answered, “I would disagree with that,” and said that he believed the document

was completely accurate. Id. Kane then testified that his July 14 observations were not one of the circumstances that led to the decision to discharge Russell. Id. If Kane did if not rely upon the July 14 observations as a reason to discharge Russell, then the notice of separation was clearly inaccurate, as the form specifically asks for a description of the “circumstances that led to the decision to separate” Russell from employment, and Kane listed the July 14 observations as one of the reasons. Kane’s evasive answers and his refusal to admit the document was inaccurate, based upon his testimony that his July 14 observations were not one of the reasons for Russell’s discharge, detracts generally from his overall credibility.

In its brief, Respondent argues that Russell should be discredited because he failed to recall specific facts, pointing to Russell’s testimony about his disciplinary history, and further claiming that Russell “mischaracterized photo evidence of the filth” at the West Salem store. (Resp’t. Br. at 18) Regarding the claim Russell “mischaracterized photo evidence,” Respondent’s brief refers to the pictures of the “cold bar stations” taken by Kane and emailed to Russell on May 31, 2023. Id. (R. 13, R. 32) However, Respondent does not point to any specific instances of alleged mischaracterization. Both Kane and Russell testified at length about these photographs. Other than the specific items depicted in the pictures, much of what they said was opinion testimony about perceived deficiencies depicted by the photos, with Kane highlighting more cleanliness deficiencies than Russell, and Russell pointing out certain physical deficits like missing tile or grout. The photographs “speak for themselves—i.e., they show what they show, notwithstanding who might be viewing them.” *Wolf v. Ferguson*, No. CIV. 04-5177, 2006 WL 375920, at \*3 (W.D. Ark. 2006). I have reviewed the photographs and do not believe that, in their respective testimonies, either Russell or Kane purposefully mischaracterized what was shown in the pictures.

As for his disciplinary history, Russell initially testified that he received three documented disciplines, referring to the written warning and final written warning issued in May 2023, and his July 2023 discharge notice. (Tr. 45–46) During cross examination, Respondent showed Russell his January 2023 written warning, which Russell admitted receiving and signing. (Tr. 128–130; R. 2) While Russell may have had some lapses in memory over his 1½ days on the witness stand, early in his testimony, before discussing his disciplinary history, Russell disclosed that, due to his war injuries and resultant PTSD, he has some memory and attention deficit issues for which he seeks counseling. (Tr. 23) I believe that whatever inconsistencies that may have occurred during Russell’s testimony were the result of the passage of time, and not an attempt to be untruthful. Assessing his demeanor at trial, as a 30 year veteran of the United States Army, who was wounded in combat, I found Russell to be someone who took his oath to be truthful seriously and considered it a solemn duty. And, with respect to the core issue in this case, whether he was asked by Kane to commit unfair labor practices, it was clear that Russell’s testimony and memory was steadfast. The record shows that Russell was the type of manager who put the welfare of his employees first, and this sense of duty was acknowledged by the West Salem partners who respected Russell and thought very highly of him as a leader. (Tr. 339–40, 375) For Russell, it was evident that Kane’s requests were an affront to the duty of loyalty he felt to the West Salem employees, much like the responsibility he held as a noncommissioned

officer in the Army to look after the welfare of his soldiers,<sup>20</sup> and therefore what occurred was ingrained in his memory. Accordingly, I credit his testimony as to what happened regarding his telephone conversations with Kane in the days after the petition was filed.

5                                   b. Kane asked Russell to commit unfair labor practices

During the phone calls in question, which occurred a few days after the union election petition was filed, Kane asked Russell to make sure none of their union discussions occurred over text or email, and that they only discuss the union in person or over the phone. Kane then  
10 asked Russell if he knew who was leading the union effort in the store, and when Russell said that he did not know, Kane asked him to maybe listen or ask around to see if he could find out who was leading the union drive. Russell refused to do so, and Kane became defensive, telling Russell that he was not asking him to stalk anyone but to listen in on those discussions and maybe start up some of those conversations to see if he could find out who was leading the  
15 store’s unionization efforts. Russell again refused to do so and said he was going to remain neutral. Kane became defensive for a second time, said he was not asking Russell to stalk anyone, but wanted him to keep his ears open and keep listening in on those conversations. Russell once more told Kane that he would not be conducting those types of activities, that he was going to stay out of that, and remain neutral. Again Kane said that he was not asking  
20 Russell to stalk anyone.

In a second call with Russell a few days later, Kane again asked if Russell had heard anything from the employees about union activities in the store and who started the union drive. When Russell said that he had not been listening in on any of those conversations and was going  
25 to stay neutral, Kane asked Russell if he had issued any documented disciplines to employees for time and attendance or related issues. Russell responded that he had not, as his approach was to primarily give employees verbal coachings. Kane told Russell that, “at this time” they needed to “start documenting all of those,” that verbal coachings were insufficient and Russell needed “to start documenting all of those coachings.” (Tr. 78) Russell told Kane that he was not going to  
30 change his approach to discipline, which complied with the training he had received, and said he had no intention of starting to document infractions that he believed did not warrant documentation.

There is no evidence that, prior to the union organizing drive at the West Salem store,  
35 Russell had a habit of putting himself in the position to eavesdrop on employee discussions or watch them while they were speaking with one another. Accordingly, Kane was requesting that Russell engage in activities that would have constituted unlawful surveillance and/or would have created an impression of surveillance in violation of Section 8(a)(1) of the Act. *Rogers Elec., Inc.*, 346 NLRB 508, 509 (2006) (“[A]n employer creates an impression of surveillance when it  
40 monitors employees’ concerted protected activity in a manner that is ‘out of the ordinary,’ even if the activity is conducted openly.”); *Durham School Services*, 361 NLRB 407, 407 (2014) (finding unlawful surveillance where manager observed employee union activity in a way that was “out of the ordinary,” because she had “atypically positioned herself in front of the facility”

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<sup>20</sup> See, e.g., The NCO Creed (“As a noncommissioned officer . . . [m]y two basic responsibilities will always be uppermost in my mind—accomplishment of my mission and the welfare of my Soldiers.”).  
<https://www.army.mil/values/nco.html> (last visited on February 7, 2026).

where she could observe the union activity, rather in the rear “where she normally was stationed”). Also, by telling Russell to ask employees questions to see if he could find out who was leading the unionization efforts, Kane was requesting that Russell potentially interrogate employees about their protected union activities. *Keystone Bldg. Prods.*, 202 NLRB 963, 967 (1973) (Respondent engaged in unlawful interrogation by asking employees who was the leader of the union and who brought the union in.). Finally, by asking Russell to change his past practice regarding disciplines, and to issue documented warnings for infractions which Russell had previously handled by having verbal discussions, Kane was asking Russell to engage in additional unfair labor practices. *Robinson Furniture*, 286 NLRB 1076, 1076 (1987) (violation where company deviated from past practice, after learning about employee union activity, and started issuing written warnings for offenses that previously were subject to verbal warnings). As such, the credited record evidence shows that, in the days following the filing of the petition, Kane asked Russell to engage in unfair labor practices and Russell told Kane he would not do so.

#### c. Respondent’s knowledge and animus

Russell’s telling Kane that he would not follow directives to eavesdrop on employee discussions, ask partners questions about the union drive, or change his disciplinary practices establish the requisite knowledge on behalf of Respondent. Anti-union animus is shown by the fact that Kane asked Russell to engage in unfair labor practices. *Quickway Transportation, Inc.*, 372 NLRB No. 127, slip op at 9 fn. 27 (2023), enfd. 117 F.4 th789 (6th Cir. 2024) (instructing supervisor to violate Section 8(a)(1) of the Act evidences the employer’s anti-union animus and its willingness to violate the Act); *Overnite Transportation Co.*, 343 NLRB 1431, 1454 (2004) (employer’s willingness to engage in unfair labor practices demonstrates its antiunion animus); *Permian Corp.*, 189 NLRB 860, 864 (1971), enfd. mem. 457 F.2d 512 (5th Cir. 1972) (antiunion animus shown by respondent’s instruction to supervisors to look for pretexts to rid the plant of union activists). Kane’s solicitation of grievances from West Salem store employees also shows animus. *Lucky Cab Co.*, 360 NLRB 271, 274 (2014) (contemporaneous 8(a)(1) violations demonstrates animus). Accordingly, the General Counsel has shown that animus against his protected conduct contributed to Respondent’s decision to fire Russell, and the burden shifts to Starbucks to show that it would have fired Russell in the “absence of the unlawful motive.” *Acumen Cap. Partners, LLC*, 122 F.4th 998, 1003 (D.C. Cir. 2024).

#### d. Respondent’s defense burden

Considering the record evidence as a whole, I find Respondent has met its burden to show that Russell, who was on a final written warning, would have been discharged notwithstanding his protected conduct. The evidence shows that Russell received a written warning on May 16, and final written warning on May 27, for operational issues including the lack of cleanliness and presence of pests in the store. There is no claim that either discipline were unlawfully motivated. And, both disciplines contained the admonition that going forward, “the store must be clean and safe for customers” or future discipline, including separation of employment, may result. (J. 1, 2) The record shows that, after May 27, there were continued instances when the store was dirty, as shown in the May 31 photographs and Sasha’s June 20 report. And, no evidence was presented that Kane knew about the union organizing drive at the West Salem store when he asked for a “separation consult” on June 28, recommending that

Russell be discharged. As such, I believe that the preponderance of the evidence shows that Respondent would have discharged Russell notwithstanding his protected conduct.

I do not believe that the General Counsel has shown that the asserted reason for Russell's discharge is pretext. *New York Telephone*, 300 NLRB 894, 896 (1990) enfd. mem. 940 F.2d 648 (2d Cir. 1991) (Burden is on the General Counsel to prove asserted reasons for employer's action was pretext.). To be sure, many aspects surrounding Russell's termination are suspicious. But, as Respondent notes in its brief, "mere suspicion cannot substitute for proof of an unfair labor practice." *LaSall Junior College*, 230 NLRB 1076, 1076 fn. 1 (1977). (Resp't. Br. at 15)

The fact that Kane submitted his "separation consult" the day before the unionization petition, was filed certainly looks suspect. That being said, no evidence was presented that Kane, or any of his superiors, knew about the union activity in the West Sale store until the petition was filed on June 29. And, the record does not support an inference that somehow Kane or his bosses knew about the union drive when he submitted the separation consult. The record contains no evidence that Kane, or any other district or regional manager, was at the West Salem store before June 29 at a time when employees were actively engaging in union activities. And, there is no evidence that, before filing the petition, employees were openly wearing union paraphernalia. Although employees told Russell about the petition before it was filed, there is similarly no evidence that Russell told Kane, or anyone else, about what he learned from the partners regarding the upcoming petition. While Barrera testified that she was concerned Respondent knew about the petition before it was filed, saying there were a couple partners at the store they were worried about and that one coworker had a mom who was a store manager, there is no evidence that would connect any of these individuals, who were not identified, to Kane or his superiors. Also, both in the Complaint and in its post-hearing brief, the government asserts that Russell was discharged for refusing to commit unfair labor practices. Russell was not asked to commit unfair labor practices by Kane until after the petition was filed, and after Kane had already asked for a discharge consultation from partner relations.

The fact that Russell's separation consult was transferred from Diaz to Durham a week after Diaz emailed Kane asking if he had considered issuing Russell a PIP in lieu of discharge also raises suspicion, especially given Durham's involvement in other matters where Starbucks was found to have engaged in unfair labor practices by NLRB judges.<sup>21</sup> However, the record is silent as to why the matter was transferred from Diaz to Durham. And, no evidence was presented that other similarly situated employees were put on a PIP instead of being discharged. Cf. *Davey Roofing, Inc.*, 341 NLRB 222, 224 (2004) (evidence does not support a finding of pretext when there are no other similarly situated employees against which to compare employer's treatment of the alleged discriminatee). The same is true regarding Kane's testimony that there have been instances when he issued an updated final written warning, in lieu of

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<sup>21</sup> See e.g., *Starbucks Corp.*, No. 27-CA-307542, JD-82-23, slip op. at 10, 20–24, 2023 WL 8826891 (Dec. 19, 2023) (judge finds that final written warning issued to employee, which been sent to Durham for her review, violated Section 8(a)(3) of the Act); *Starbucks Corp.*, 19-CA-295708, JD-02-24, slip op. at 17, 32–33, 2024 WL 68035 (Jan. 4, 2024) (judge finding that Durham's questioning of an employee evidenced anti-union animus); *Starbucks Corp.*, No. JD(SF)-01-24, slip op. at 25–27, 2024 WL 162869 (Jan. 12, 2024) (judge finds Durham, among others, advised store manager that employee who wore a union logo baseball hat was not in compliance with Starbucks dress code policy and that Starbucks violated Section 8(a)(1) of the Act by requiring the employee to either remove the hat, or go home without pay).



termination, even though he had already started the process of requesting a separation consultation. While this testimony establishes that an updated final written warning, in lieu of termination, was possible, no evidence was presented to show the disciplinary history of those employees who had received an updated final written warning, or the circumstances surrounding those decisions, that would show they were similarly situated to Russell. Therefore, I find Kane’s testimony alone, that it would have been possible to have issued Russell further discipline in lieu of termination, is insufficient in these circumstances to establish pretext. *Id.*

Pressler’s involvement in Russell’s discipline also raises an eyebrow, as Pressler has committed unfair labor practices in the past. When he was a Starbucks district manager overseeing a Portland, Oregon store that was unionizing in 2022, Pressler was found to have engaged in, or was involved with, various unfair labor practices including telling an employee she could not wear a union t-shirt and the unlawful discharge of an employee because of her union activities. *Starbucks Corp.*, Case No. 19-CA-296765, 2024 WL 687839 (Feb. 14, 2024), *enfd. Starbucks Corp. v. NLRB*, 2025 WL 1135120 (D.C. Cir. 2025) That being said, other than Pressler being copied on emails about Russell’s separation, and his name appearing on the MSS form as an approving official regarding the delay of Russell’s separation date, no evidence was presented about Pressler’s involvement in the final decision to discharge Russell. Indeed, aside from the emails to partner relations, very little evidence was presented about who, other than Kane, participated in the final deliberations regarding the decision to fire Russell, even though it was clear from Kane’s separation consult email that he was seeking guidance from others on how he should proceed. (R. 35)

The General Counsel argues that pretext is shown by the fact that other West Salem store managers were not terminated for cleanliness and/or pest issues. (GC. Br. at 45, 47) To be sure, the record shows that there were significant pest and cleanliness issues at the store before, during, and after Russell’s tenure. However, there is limited record evidence regarding the disciplinary history of the other store managers. No evidence whatsoever was introduced about Ashley’s disciplinary history. Regarding Chirstian, Kane admitted that Christian did not receive a written discipline for the lack of cleanliness or presence of pests in the store, even though the evidence shows both were a problem at the time. However, Christian was the West Salem store manager for only two months, temporarily covering for Ashley who was on maternity leave. Russell was the West Salem store manager for about ten months before receiving his first discipline involving cleanliness/pest issues at the store. I do not find the fact that Respondent failed to discipline or discharge a temporary store manager for cleanliness/pest issues, while he was covering for the existing store manager, is evidence of pretext. As for Laura, the store manager who took over after Russell, there is no evidence in the record of her disciplinary history, other than Kane’s testimony that Laura was not terminated for flies in the store. Because Kane was no longer responsible for overseeing the West Salem starting August 1, 2023, at most Laura work under Kane for a few weeks. And, it appears that, after Kane no longer had any responsibility for the West Salem store, and after the store was put on a pest treatment escalation plan, there was some improvement regarding sanitation issues under Laura’s tenure.<sup>22</sup> On the evidence presented, I do not believe that the General Counsel has shown that the disciplinary history of the other West Salem store managers supports a finding of pretext.

<sup>22</sup> See GC. 22 # 387 (pest control vendor notes for 4/17/24 saying that, “[s]anitation has improved considerably due to the hard work of the staff and manager,” and therefore the “store can be taken off escalation.”).

In its brief, the General Counsel seeks an adverse inference arguing that Respondent “failed to call key players who could have provided corroborating, critical testimony on the condition of the West Salem store,” including Sasha, Christian, Laura, Palmini, and Presler, and saying that Starbucks “did not provide any testimony or evidence that any of those managers are no longer employed by Respondent.” (GC. Br. at 36–37) The missing witness rule “allows a judge to draw an adverse inference against a party that fails to call a witness who is under the control of that party and is reasonably expected to be favorably disposed towards it.” *Natural Life, Inc.*, 366 NLRB No. 53, slip op. at 1 fn. 1 (2018). However, the burden is on the proponent to prove that the missing witness would have been favorably disposed to the other side. *Steinhilber v. McCarthy*, 26 F. Supp. 2d 265, 280 (D. Mass. 1998). And, former employees are generally not considered to be under a party’s control. *Natural Life, Inc.*, supra.; 48A Am. Jur. 2d Labor and Labor Relations § 2021 (2025) (it is improper to draw adverse inferences from an employer’s failure to produce testimony from relevant witnesses who were no longer in its employ at the time of the hearing). Here there was little to no evidence in the record as to whether Sasha, Christian, Laura, or Palmini, were still employed by Respondent at the time of the hearing, or that they would have been reasonably expected to be favorably disposed towards Starbucks if they testified. Indeed, it appears from the record that Christian was fired by Starbucks. Given that the General Counsel has failed to marshal sufficient evidence to show that, at the time of the hearing, any of these individuals were under the control of Starbucks and reasonably expected to be favorably disposed towards Respondent, I find that an adverse inference is unwarranted. As for Presler, when asked “who is Josh Presler,” Kane testified “it’s my boss.” (Tr. 511) Presuming this testimony is sufficient to show that Presler was still working for Starbucks at the time of the hearing, it is unclear how Pressler would have provided “critical testimony on the condition of the West Salem store,” as argued by the General Counsel. The record shows that Pressler only visited the store once, on May 25, two days before Russell was presented with his final written warning, the propriety of which is not at issue in this matter. There is no evidence that Pressler visited the West Salem store after Russell’s final written warning was issued. Therefore, I decline to take an adverse inference with respect to the condition of the West Salem store, as requested by the General Counsel, based upon the fact that Presler did not testify.

It seems that Russell’s assignment to be the West Salem store manager was a Sisyphean task, especially in light of his testimony, and that of Barrea, which I credit, that Respondent was cutting employee hours at the store.<sup>23</sup> Faced with incessant pest and cleanliness issues which he inherited, a store that needed repairs, a limited number of available employee work hours per week that were mandated from above, and a store layout that required employees to dart between cars in the drive-thru lane simply to take out the trash, Kane’s expectations for Russell and the West Salem store may have been unattainable. While the decision to discharge Russell might appear harsh or unfair, that is not the standard used in determining whether a violation occurred. *Pearl Recycle Center*, 237 NLRB 491, 497 (1978) (while employer’s discharge decision, fair or unfair, seemed harsh, no violation found as the evidence did not show that the discharge was

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<sup>23</sup> Respondent introduced no documents to support Kane’s testimony, which I do not credit, that “additional hours of noncoverage” were “enabled” at the West Salem store. (Tr. 438) *UAW v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) (“when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him”).

motivated by antiunion considerations). Here, Russell was on a final written warning, the propriety of which is uncontested, at the time of his discharge. The record shows that, after Russell received his final written warning, the West Salem store continued to have cleanliness issues. And, there is no evidence that Kane knew about the union organizing drive at the store when he asked for a “separation consult” on June 28, recommending that Russell be fired. Under these circumstances, I recommend the Complaint allegation that Russell was discharged for refusing to commit unfair labor practices be dismissed. See *Merillat Industries*, 307 NLRB 1301, 1303 (1992) (Respondent’s rebuttal burden requires only a preponderance of the evidence, and its “defense does not fail simply because not all the evidence supports it, or even because some evidence tends to negate it”).

#### CONCLUSIONS OF LAW

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

2. Workers United, affiliated with the Service Employees International Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. By soliciting employee grievances and impliedly promising to remedy them in order to discourage employees from unionizing, Respondent violated Section 8(a)(1) of the Act.

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

#### 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 actions, as further set forth in the Order below, designed to effectuate the policies of the Act. The Respondent shall be required to post/distribute the attached notice in English in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010) and *Durham School Services*, 360 NLRB 694 (2014).

In the Complaint, the General Counsel seeks a notice reading as an additional remedy. However, in its brief the General Counsel presents no argument supporting this request. Based upon the record in this matter, I do not believe that a notice-reading remedy is warranted.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>24</sup>

#### ORDER

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

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<sup>24</sup> 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.

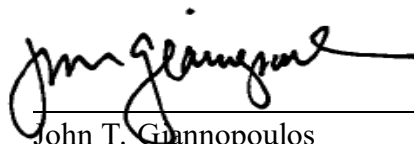
1. Cease and desist from soliciting employee grievances and impliedly promising to remedy them in order to discourage employees from selecting union representation.

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

(a) Within 14 days after service by the Region, post at its Store #9611, located at 1124 Wallace Road NW #105, Salem, OR 97304 copies of the attached notice marked "Appendix."<sup>25</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, text message, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at Store #9611 at any time since January 18, 2023.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 9, 2026



John T. Giannopoulos  
Administrative Law Judge

<sup>25</sup> 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 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** solicit grievances from you and impliedly promise to remedy them to discourage you from selecting union representation.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

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](http://www.nlrb.gov)

Green-Wyatt Federal Building  
1220 SW 3rd Avenue, Suite 605; Portland, OR 97204-2170  
Tel: (503) 326-3085; Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/19-CA-325519](http://www.nlrb.gov/case/19-CA-325519) 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 (206) 220-6300.