

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

**STARBUCKS CORPORATION,**

**Respondent**

**and**

**19-CA-297589  
19-CA-297794  
19-CA-299666  
19-CA-303477**

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

**Charging Party**

*Cosimo Gaudio, Sarah McBride, and Kristin White, Esqs.,  
for the General Counsel.*

*Benjamin Berger, Esq.,  
for the Charging Party.*

*Emma Chase-Swartz, Kimberly J. Doud, Ryan P. Hammond,  
Yijee Jeong, and Gretchen Marty, Esqs.,  
for the Respondent.*

**DECISION<sup>1</sup>**

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<sup>1</sup> On December 20, 2024, pursuant to Section 102.36(a) of the Board's Rules and Regulations, Respondent filed a motion to disqualify me from the instant proceeding and to retry the case with a new judge. In general, administrative law judges must conduct and preside over all hearings impartially. See Sec. 101.10(b) of the Board's Rules and Regulations. The Board has recognized that disqualification may be required "not only to avoid actual partiality and prejudice..., but also to avoid even the appearance of a partisan tribunal." *Indianapolis Glove Co.*, 88 NLRB 986, 987 (1950). In this case, I conclude that the motion and accompanying affidavit do not assert sufficient basis for my disqualification or recusal.

Respondent asserts that there is the appearance of a conflict of interest because, when I served in the role of Regional Attorney for Region 6 (Pittsburgh), I "oversaw" complaints for Cases 06-CA-294667 and 06-CA-299353; Cases 06-CA-297994 and 06-CA-312721; and Case 06-CA-302100. Respondent further

**RENÉE D. MCKINNEY, Administrative Law Judge.** The complaint, as amended,<sup>2</sup> alleges that, about April 18 and April 25, 2022,<sup>3</sup> in the background of an ongoing organizing campaign at the 1st and Pike store located in Seattle, Washington, Respondent held a collaboration/cocreation session<sup>4</sup> with employees at the Pike Place store, also located in Seattle,

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asserts that there is an appearance of a conflict because, again when I was Region 6's Regional Attorney, I participated in settlement discussions for Cases 06-CA-294667, 06-CA-299353, and 06-CA-302100. Similarly, in its reply to the General Counsel's opposition, Respondent contends my supervision of neutral investigations in charges filed against Respondent in Region 6 from September 9, 2022 through February 28, 2023 raises the appearance of a conflict.

However, the instant proceeding involves only Region 19 cases, which are unrelated to any of those Region 6 cases. The charges were not filed in the same Region and do not involve the same allegations, employees, or alleged supervisors and agents. I was not involved in Region 19's investigation, settlement discussions, or pre-trial litigation preparation of the instant cases.

Also in its reply, Respondent contends that I was removed from Cases 14-CA-334485 and 14-CA-319544 because Respondent submitted affidavits with motions to disqualify me from those proceedings. This contention is incorrect. As stated in Judge Carter's December 6, 2024, order, Respondent's motion was *denied as moot* because Case 14-CA-334485 was reassigned to a different judge. Further, as stated in Judge Carter's December 18, 2024, order, Respondent's motion to disqualify me in Case 14-CA-319544 was also *denied as moot* because Judge Carter granted Respondent's motion to postpone the hearing in that case. Reassigning cases is a common administrative procedure in the Division of Judges to balance caseloads among the judges and manage the Division of Judges' workload as a whole.

Finally, I have not demonstrated any bias against Respondent in my off-the-record discussions with the parties, in my rulings at hearing, or in my written orders. No reasonable person would conclude under these circumstances that there is even the appearance of partisanship here. Respondent's motion to disqualify me from this proceeding is denied.

<sup>2</sup> On April 18, 2024, the General Counsel made an oral motion to conform the pleadings to the proofs. The amendments were comprised of the addition of an alleged agent in paragraph 4; the dates of allegedly unlawful conduct alleged in paragraphs 6(a) and 6(b); the number of alleged discriminatees in paragraphs 8(c)(ii), 8(c)(iii), and 8(c)(iv); and added the names of alleged discriminatees in paragraph 8(c)(v). I instructed the parties to explain why the motion should or should not be granted in the post-hearing brief on the merits.

The hearing judge has "wide discretion" in granting or denying a motion to amend. However, in exercising that discretion the judge should consider: "(1) whether there was surprise or lack of notice, (2) whether there was a valid excuse for the delay in moving to amend, and (3) whether the matter was fully litigated." *Rogan Bros. Sanitation, Inc.*, 362 NLRB 547, 549 fn. 8 (2015), enf'd. 651 F. Appx. 34 (2d Cir. 2016).

Exploring these factors in turn, I find that the General Counsel has not articulated any valid excuse for the delay in moving to amend before the close of the prosecution's case-in-chief. This hearing was held on 16 days in December 2023, March 2024, and April 2024. The General Counsel did not finally rest until April 14, 2024—the penultimate day of hearing—but did not make its motion at that time. Yet, there was no surprise or lack of notice and the desired amendments were fully litigated through testimony and received documentary evidence. Respondent was allowed to present witnesses and documentary evidence both affirmatively and in response to the General Counsel's case throughout the hearing. Thus, on balance, although I find that the General Counsel unnecessarily delayed her motion to amend, I find that the proposed amendments do not constitute surprise or unfairly prejudice Respondent.

The General Counsel's motion to amend is granted.

<sup>3</sup> All dates are in 2022 unless otherwise indicated.

<sup>4</sup> The complaint alleges that from about April through August, in response to the nationwide Union

Washington, and, about April 25, Respondent held a collaboration/co-creation session with employees at the same store. The complaint alleges that, during those sessions, Respondent solicited employee grievances and promised employees that Respondent would promptly remedy such grievances. These asserted solicitations of grievances are alleged violations of Section 8(a)(1) of the Act.

Moreover, the complaint alleges that about June 14, during interviews for Heritage Market positions, Respondent, by Assistant Store Manager Annie Anderson, interrogated its employees about their union activities and support, also in violation of Section 8(a)(1) of the Act.

Finally, the complaint alleges that, about late June/early July, in violation of Sections 8(a)(3) and (1) of the Act, Respondent (1) implemented its three-store Heritage Market, “the first ‘district’ comprised of so few stores and characterized by regular interchange of employees and common management in the country”; (2) failed and refused to re-hire approximately 29 of the 73 total employees previously working in the three downtown Seattle stores, including 17 of the 22 employees previously working in the 1st & Pike store; (3) granted raises and new benefits to the 40 employees re-hired into their positions and all other employees hired into the new Heritage Market; and (4) denied the same raises and benefits to the 29 employees it did not re-hire into the Heritage Market and caused their forcible transfers or constructive discharges.

Respondent’s answer denied the violations of the Act alleged above and also asserted a suite of constitutional and boilerplate defenses.<sup>5</sup>

As explained below, I find that the General Counsel did not establish that Respondent solicited grievances and offered benefits to employees in violation of Section 8(a)(1) of the Act. I also find that the General Counsel did not establish that Respondent interrogated employees about

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organizing campaign, Respondent, held a series of “collaboration” or “co-creation” (“collaboration/co-creation”) sessions with its employees around the country, including in Atlanta (GA), Denver (CO), Chicago (IL), St. Louis (MO), Tarrytown (NY), Wilmington (DE), York (PA), Washington (DC), Nashville (TN), Orlando (FL), San Jose (CA), Dallas (TX), Phoenix (AZ), Portland (OR), Long Beach (CA), Los Angeles (CA), San Diego (CA), Seattle (WA), and San Francisco (CA), as well as other locations unknown to the General Counsel but known to Respondent. Yet, as to the instant proceeding, the General Counsel’s brief expressly disclaims any intent to assert that the collaboration sessions identified in the complaint were unlawful in and of themselves. (GC Br. 14 fn. 7.)

<sup>5</sup> Respondent briefed two constitutional defenses: (1) that the NLRB’s structure violates Article II’s separation of powers and (2) that the Board’s administrative law judges are unconstitutionally protected by “three-layer removal” restrictions, also in violation of Article II. In *Commonwealth Flats Development Corporation*, the Board already considered and rejected these arguments as having “no merit.” 373 NLRB No. 142 (2024), slip op. at 1 fn. 1. Consistent with that determination, I find no merit to these arguments.

Further, Respondent did not adduce testimony or brief its constitutional defenses that the complaint violated the the 1st Amendment and 7th Amendment, nor its boilerplate defenses asserting that the complaint fails to state a claim; that the allegations are vague, frivolous, and made in bad faith; that former member Wilcox and member Prouty should recuse themselves; that the Board is engaging in improper rulemaking and is not a neutral entity with regard to Respondent; and that the complaint is barred by the statute of limitations, and/or the doctrines of waiver, laches, and/or estoppel. Accordingly, I deem these defenses all waived. See *Yorkaire, Inc.*, 297 NLRB 401 (1989), enf. 922 F.2d 832 (3d Cir. 1990). Respondent’s arguments regarding the scope and nature of appropriate remedies are moot given my recommendations on the merits.

5 their union support in violation of Section 8(a)(1) of the Act. I further find that the General Counsel did not establish that Respondent created and implemented the Heritage Market or failed to hire its union supporter employees to staff the Heritage Market location and denied the same benefits to those employees not hired because employees engaged in protected concerted or union activities in violation of Section 8(a)(3) of the Act.<sup>6</sup> Finally, I find that Respondent did not constructively discharge employees in violation of Section 8(a)(3) of the Act.

10 STATEMENT OF THE CASE

Charge	Filed	Service	Amendment	Service
19-CA-297589	June 14, 2022	June 14, 2022		
19-CA-297794	June 16, 2022	June 17, 2022		
19-CA-299666	July 19, 2022	July 19, 2022	August 24, 2022	August 24, 2022
			January 31, 2023	February 1, 2023
19-CA-303477	Sept. 14, 2022	Sept. 15, 2022	February 3, 2023	February 3, 2023

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<sup>6</sup> During the hearing, on December 12, 2023, Respondent made a motion to dismiss paragraphs 5, 6, and 9 of the complaint pursuant to *Jefferson Chemical*, 200 NLRB 992 (1972). (Tr. 8.) At that time, I instructed the parties to address the issue in their post-hearing briefs and stated I would rule on it in my decision and recommended order. (Tr. 14.)

The General Counsel may not relitigate the lawfulness of conduct in separate proceedings by asserting that the conduct violates different sections of the Act. *Jefferson Chemical Co.*, 200 NLRB at 992. *Jefferson Chemical* only applies to cases involving relitigating the same facts or conduct (e.g., litigating the same facts or conduct under a different legal theory or Section of the Act). *DHSC LLC, d/b/a Affinity Medical Center, et al.*, 364 NLRB No. 68 slip op. at 2 (2016).

Respondent contends that complaint paragraphs 5 and 6’s allegations regarding the solicitation of grievances should have been consolidated into the complaint in Case 21-CA-294571, which, in pertinent part, involved allegations surrounding a “partner collaboration session” that took place in Long Beach, California on April 8, 2022.

I agree with the General Counsel that the motion lacks merit because, first, the allegation at issue was severed from the complaint in Case 21-CA-294571 and withdrawn by the charging party. Second, as also noted by the General Counsel, the collaboration session at issue in Region 21 took place on a different date and in Long Beach, not Seattle, where the instant alleged misconduct occurred.

That said, I am mindful, of course, of Respondent’s argument that the instant complaint specifically refers to collaboration sessions in Long Beach (and other cities) in paragraph 5(a). Yet, as amended, the complaint does not allege in paragraph 9 that the collaboration sessions identified in paragraph 5(a) violated the Act. The instant complaint does not seek to litigate the lawfulness of collaboration sessions in Long Beach or any other location. See GC Br. 14 fn. 7.

Finally, the General Counsel controls the complaint absent the arbitrary abuse of discretion. *Service Employees Local 87 (Cresleigh Mgmt.)*, 324 NLRB 774 (1997). I cannot conclude that, under the circumstances presented here, the General Counsel abused her discretion in not consolidating the allegations in the instant cases with the severed and withdrawn allegation in Case 21-CA-294571.

Respondent’s motion to dismiss paragraphs 5, 6, and 9 of the complaint due to relitigation of issues is denied.

The General Counsel issued a consolidated complaint on March 2, 2023; an amendment to the consolidated complaint on May 23, 2023; a further amended consolidated complaint on November 29, 2023; and an amendment to further amended consolidated complaint on  
 5 December 4, 2023. Respondent filed a timely answer to the consolidated complaint on March 15, 2023; an answer to the amended complaint on May 30, 2023; and an answer to further amended consolidated complaint and answer to amendment to further amended consolidated complaint on December 11, 2023.

10 All parties were afforded the right to call and examine witnesses, present any relevant documentary evidence, and argue their respective legal positions. After the conclusion of the trial, Respondent and the General Counsel filed briefs, which I have carefully considered.

15 Based on the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party, and Respondent, I made the following findings, conclusion of law, and recommendations.<sup>7</sup>

#### JURISDICTION

20 Respondent, a Washington corporation with an office and place of business in Seattle, Washington, has been engaged in the business of operating retail coffee shops throughout the United States. During the 12 months preceding the filing of the consolidated complaint, Respondent derived gross revenues in excess of \$500,000 and purchased and received goods at  
 25 its Store #301, located at 1912 Pike Place, Seattle, Washington 98101 (“Pike Place”); Store #14870, located at 102 Pike Street, Seattle, Washington 98102 (“1st & Pike”); and Store #65375, located at 1305 1st Avenue, Seattle, Washington 98101 (“1st & University”) that are valued in excess of \$5000 and came directly from points outside the State of Washington. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of  
 30 Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that Workers United Labor Union International, affiliated with Service Employees International Union (“Union”) has been a labor organization within the meaning of Section 2(5) of the Act.

35 At all material times, Starbucks Corporation has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union” has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

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<sup>7</sup> The transcripts and exhibits in this case generally are accurate. On July 12, 2024, Respondent filed a motion to correct the transcript in this case. I have reviewed the alleged errors identified in the motion and compared them against the transcript text. While the majority of the alleged errors are clearly spelling or typographical errors or misidentification of the speaker by the court reporter, others reflect a speaker who grasped at the right way to frame an answer, which came out awkwardly; a speaker who misspoke; a speaker who misidentified a person; or a speaker who mispronounced a word or name. These are not transcript errors. These unexpected words, names, and turns of phrase are simply the result of extemporaneous speech. Respondent’s motion is granted to the extent that it is consistent with the transcript corrections listed in the appendix to this decision.

FINDINGS OF FACT<sup>8</sup>I. *Background*

5 Respondent operates over 9,000 coffee retail stores nationally. These stores are slotted into geographical groups called districts, which are then grouped into regions; regions, in turn, are grouped into areas. The number of stores in a district can vary. (Tr. 1257, 1258.)

10 During most of 2021-2022, the Seattle, Washington metro area stores were in District 142, overseen by district manager Amy Quesenberry. (Tr. 2095-2096.) The 87 stores in District 142 were in Area 10 and covered by regional director Nica Tovey (Tr. 41.) During that time, District 142 included Respondent's three stores located in downtown Seattle in or near Seattle's Pike Place Market: 1912 Pike Place ("Pike Place" or "the first store"); 102 Pike St. ("1st and Pike"); and 1305 1st Ave. ("1st and University").<sup>9</sup>

15 These three locations draw tourists due to their proximity to Seattle's Pike Place Market and the Pike Place location's status as the first store. (Tr. 138, 1060, 1081, 1244, 1258, 1353, 1354 -135; GCX 45.) This is particularly true during the summer months, when Seattle experiences a surge in tourism. (Tr. 632, 1147.) April through September are Respondent's  
20 busiest months at the Pike Place and 1st and Pike stores. (Tr. 632, 724, 1147-1148, 1561.) During this peak season, Respondent's employees at Pike Place and 1st and Pike historically earned a dollar more per hour than at most other locations in the Seattle metropolitan area. (Tr. 142, 1561.)

25 There were approximately 75-80 baristas and shift supervisors working at Pike Place, 1st and Pike, and 1st and University before the creation of the Heritage Market. (GCX 53, 114(b-c).)

II. *Union Organizing Begins in Area 10*

30 The Union filed a petition for an election in Case 19-RC-287954 at Respondent's store #304 ("Broadway and Denny") on December 20, 2021. *Starbucks Corporation*, 372 NLRB No. 93, slip op. at 2 (2023).

35 The Union filed a petition seeking to represent the baristas and shift supervisors at the 5th and Pike store on January 25. (Tr. 327.) Employee Sarah Pappin had organized Respondent's 5th

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<sup>8</sup> In making credibility determinations, I have considered all relevant factors, including the context of the witnesses' testimony, their interests and demeanor, whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts, inherent probabilities and reasonable inferences which may be drawn from the record as a whole. Credibility findings need not be all-or-nothing—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. See *Daikichi Sushi*, 335 NLRB 622, 623 (2001), *enfd.* 56 Fed.Appx. 516 (D.C. Cir. 2003); *Jerry Ryce Builders*, 352 NLRB 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), reversed on other grounds 340 U.S. 474 (1951). To the extent that credibility issues arose in this case, my credibility determinations are detailed in the findings of fact below.

<sup>9</sup> The three stores have internal company code numbers of 301 (Pike Place), 14870 (1st and Pike), and 65375 (1st and University). (Tr. 1477-78.)

and Pike store by speaking with co-workers about unionizing several times per day while on shift. (Tr. 327-328.)

5 Following the Broadway and Denny store's ballot count on March 22, Tovey emailed temporary regional vice president Jessica Borton and informed her of a plan to increase security monitoring at the stores located at 5th and Pike, 1st and Pike, and Pike Place. (Tr. 659, 1013, 1065; GCX 27, 80.) Tovey testified that any time one of Respondent's stores was involved in high profile news, the Pike Place store was a locus of attention by activists, employees, customers, and the news. (Tr. 1436.) Union activity such as leafleting, distributing Union  
10 stickers, petition filings, was occurring in Area 10. (Tr. 1326, 1436.)

Howard Schultz, Respondent's founder, returned as Respondent's interim CEO during the first week of April 2022. (Tr. 482, 1149-1150; GCX 15, 17.)

15 On March 30, the Union was certified as the representative for a unit of employees at Broadway and Denny. *Starbucks*, 372 NLRB No. 93, slip op. at 3. The Union was certified on June 14 for the 5th and Pike store.<sup>10</sup>

### 20 III. *Union Organizing at 1st and Pike*

In December 2021, 1st and Pike store barista Yatzia Arango and Shift Supervisor Liz Voytas began working together to organize their store. (Tr. 46, 577, 578.) Arango and Voytas reached out to already-established Union organizers in the area and discussed unionizing with co-workers in the back room of 1st and Pike two to three times a week. (Tr. 46, 47, 577.) Voytas  
25 testified that they tried to speak directly with each of the approximately 30 employees at the 1st and Pike store about the Union. (Tr. 48.) They recalled speaking to 9 other employees about organizing a union: Arango, Toni Whatley, Daisy Lopez, Whittaker Grant, Jeremy Shen, Ira Mangipudi, Henry Osler, Elizabeth Dion, and Katherine Van. (Tr. 48, 508, 625-626.)

30 By February of 2022, Arango was openly discussing the Union inside the 1st and Pike store. She testified that store manager Manuiki Welsh-Coleman told her to stop talking about the Union at work. (Tr. 567, 568.) Arango also overheard Welsh-Coleman tell employee Abraham Patron<sup>11</sup> to stop looking into unions because he had a really good job with Respondent already. (Tr. 590, 591-592.) Welsh-Colman did not recall a conversation where she forbade employees  
35 from talking about the Union. (Tr. 1573, 1584.)

Arango also communicated with organizers from Broadway and Denny to get pins that said "Union Strong". (Tr. 581.) Arango distributed the pins to her coworkers at the store and left the rest of the pins in the back room at 1st and Pike in a bag. (Tr. 580, 581, 582.) The pins were  
40 about two inches in diameter and had the Union's logo on them. (Tr. 58.)

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<sup>10</sup> I take notice of the certification of representative issued by Region 19 (Seattle) June 14, 2022. See *Rockwell Automation/Dodge*, 330 NLRB 547, 547 fn. 4 (2000) (Board takes administrative notice of the tally of ballots in related representation proceeding).

<sup>11</sup> Patron did not testify.

About March or April 2022, during a discussion with district manager Quesenberry in the lobby, Quesenberry asked shift supervisor Daisy Lopez whether she know of some talk of rumors. (Tr. 530.) Lopez asked about what: the union? Quesenberry responded well, maybe, yeah. Lopez volunteered that she did not support the Union and did not believe it would be successful because there were a lot of young people and teenagers at the store. Lopez  
 5 volunteered that she knew that Voytas “was in charge” of unionizing the store but Lopez did not think she had gathered much support. (Tr. 511, 530.)

Lopez also asked whether, if the store unionized, an employee could transfer out.  
 10 Quesenberry said yes and asked if Lopez knew of such a person, she tell Quesenberry immediately. (Tr. 511.) Lopez clarified that she was talking about herself--could she transfer out if the store unionized? Quesenberry told Lopez that “they” would make that happen. (Tr. 511.)

Finally, Lopez told Quesenberry that Elizabeth (“Liz”) Voytas was going to be in Alaska  
 15 for several months soon and would not be at the store so Quesenberry had nothing to worry about. Quesenberry replied that she “knew all about Liz”. (Tr. 511, 531.)

Voytas regularly wore a Union pin on her apron while at work beginning in April of 2022. (Tr. 49:23-25, 50:2-15; 2050:3-5, 629:15-16). She did so about three days per week from  
 20 April 2022 until she left the company in November 2022. (Tr. 36, 49.) However, Voytas never wore her pin when store management was present. (Tr. 50, 98, 122-124, 129.) They testified that they tried not to be associated with unions in the mind of management and did not speak about their union activity to management. (Tr. 55, 111.) Yet, Voytas also testified that they had a conversation in May about his opinion of unions at Starbucks generally with assistant store  
 25 manager, Edward (“Eggy”) Ruiz. (Tr. 59-60.) Eggy expressed that he did not want to be involved with union organizing but nothing else. (Tr. 108.)

Also in May, 5 to 10 other employees also began wearing Union pins on their aprons while at work. (Tr. 51:2-18). Barista Mangipudi picked up her Union pin from the bag left by  
 30 Arango in the back of the store and wore it every shift she worked in May and June 2022. (Tr. 2050, 2053, 629.) She wore the pin while interacting with store manager Eddie Heitger.<sup>12</sup> (Tr. 2054.) Barista Katherine Van wore the Union pin on her apron after the Union filed with the Board a petition seeking an election on June 6. (Tr. 629.)

#### 35 IV. *Management’s Pre-emptive Union Avoidance Activities at Pike Place*

In early February, Pike Place store manager Cora Chairez-Carter and assistant store manager Joshua Dodge approached Cook while she was working and asked her to join them for a meeting before escorting her to a rooftop of a nearby business. (Tr. 144.) They began by offering  
 40 to answer any questions Cook had about unionizing. (Tr. 144-145.)

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<sup>12</sup> Store manager Heitger testified that he did not overhear any partner conversations regarding unions prior to the 1st and Pike petition being filed. (Tr. 2085-2086.) However, he was not asked whether he saw Mangipudi wearing her Union pin. As Mangipudi’s testimony is un rebutted, then, I find that Heitger knew that the 1st and Pike employees were organizing because he talked to Mangipudi in May while she was wearing her Union pin.

Cook responded that she understood why employees at other locations felt they needed additional support, having worked at several other stores herself. (Tr. 146.) Chairez-Carter told Cook never to sign a union authorization card if presented with one, and to “just vote no” if there was a union election. (Tr. 146.) Chairez-Carter expressed that she would no longer want to work  
 5 for Respondent if the store were ever to unionize. (Tr. 146.)

A few weeks later, district manager Quesenberry approached Cook in a small area in the back of the store where Cook was plugging in her music, blocking the doorway. (Tr. 149.) Quesenberry asked Cook what her feelings were about the Union. (Tr. 149.) Cook replied that  
 10 she had yet to formulate an opinion. (Tr. 149.) Quesenberry expressed to Cook that Respondent did not need a union: unions are more for police officers or physical labor jobs. (Tr. 149.) A few hours later, assistant store manager Natalie Anderson came up to Cook and asked how she was doing. She said that she was sorry for the way Quesenberry approached Cook, which she stated was inappropriate. (Tr. 149-150.)  
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On March 30, Cook sent assistant store manager Anderson a text message informing her that Cook’s former store in Oregon had unionized. (Tr. 160, 162; GCX 5.)

V. *Respondent’s Past Practice of Soliciting Employee Feedback*

Starbucks’ corporate culture stresses the importance of listening and learning from partners. This corporate practice is an expression of what Starbucks calls “servant leadership”, which means that leaders serve the team; the team does not service the leader. (Tr. 930.) In practice, this concept has taken the form of various voluntary surveys, (Tr. 932-933, 1276.), and,  
 20 since 2018, the implementation of the Store Manager Approach, which encourages store managers to meet with partners at the store level to obtain partner feedback. (Tr. 954-955; R. Ex. 3.)  
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Another formal meeting with management is Starbucks’ practice of having Performance and Development Conversations (“PDC”) between managers and employees. In these meetings, employees can discuss their professional development and give feedback to management. (Tr. 939-940.) In addition, Starbucks holds “skip level” meetings between, for example, a partner and their direct supervisor’s manager to make employees more willing to share any feedback that might be critical to the direct manager. (Tr. 940, 942.) These meetings may also go by the names  
 30 “town hall, listening sessions, and coffee connects.” (Tr. 947.)  
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Borton also testified to a Starbucks practice called “road shows”, which are listening sessions where Starbucks managers travel to different markets around the country and solicit partner feedback. (Tr. 949-950, 1272.) Road shows often occur when there is a change in  
 40 leadership. (Tr. 950.) They may also occur when management wants to check in with partners about a specific challenge they are facing. An example given of a road show at hearing was the 2018 arrest of two Black men from a Philadelphia Starbucks. Then-CEO Schultz and other managers travelled to the Philadelphia store to hear from employees about the incident. (Tr. 1013-1014, 1272.)

There are also informal “check-ins” daily between store management and employees to give the day’s work priorities and two-way feedback on performance and expectations.

5 Upon Schultz’s return to the company’s leadership in April, Respondent held  
collaboration sessions attended by Schultz, corporate officers, and supervisors and managers and  
employees selected by Respondent in cities across the country, including Atlanta; Boston; Dallas;  
Florida; Maryland; White Plains, New York; San Diego and San Francisco; Schaumburg, Illinois;  
Seattle; and York, Pennsylvania. (GCX 15, 16, 17, 20, 21.) Generally, the first half of the session  
10 Respondent containing issues that employees had apparently raised in the past. (GCX 15, 16, 17,  
20.)

15 In the second half of the session, the facilitators placed large sheets of paper on the walls  
with the following prompts written at the top: “What is one thing Starbucks can do to make you  
feel supported in your role?”; “What is one thing Starbucks can do to make you proud to be a  
partner<sup>13</sup>?”; and “What would employees do if they got the chance to build their ideal Starbucks  
store from the ground up?” (GCX 15, 16.) Employees wrote their ideas on sticky notes, which  
they affixed to the appropriate large sheet paper. Next, employees reviewed all the posted notes  
and placed stickers on the ideas they liked e.g. increased pay, additional tipping, additional  
20 training, more face-to-face listening sessions, and predictable scheduling. (GCX 15, 16.)

Schultz spoke only to ask follow-up questions during discussions.

25 In early April, employees throughout Respondent’s stores watched a video of a speech  
that acting CEO Schultz had given at Respondent’s headquarters. (Tr. 166.) The video was  
approximately two hours long, and store managers showed it to employees in pairs as assigned  
training. (Tr. 171-172.). In the video, Schultz remarked that, for 51 years, Respondent had never  
needed a union and they did not need one now. (Tr. 172.)

30 VI. Respondent Announces Pike Place Will Move to a New District

In mid-April 2022, Respondent held a meeting for the Pike Place shift supervisors at the  
1st and Pike store. (Tr. 164.) Regional director Tovey announced that Pike Place was being  
moved into a new district. (Tr. 166.). This planned move would separate Pike Place from 1st and  
35 Pike. (Tr. 47-50, 164.) No witness was able to explain which stores were previously in the same  
district as Pike Place and 1st and Pike.

40 During the meeting at Pike Place, Tovey asked the shift supervisors what they thought of  
the video of CEO Schultz they had been required to watch a few days prior. (Tr. 166, 1451.) Shift  
supervisor Kalani Reeves said in response that he believed Schultz was “just another rich white  
asshole.” (Tr. 167-168, 1058-1059, 1291-1292.)

45 As before in her meeting with Chairez-Carter and Dodge, Cook replied that she could see  
why employees at other stores feel the need to unionize, as she had experienced the difficulties of  
gaining enough hours and support at other locations prior to working at Pike Place. (Tr. 168:11-

<sup>13</sup> “Partner” is Starbucks parlance for employees.

14.) Cook voiced her desire for all stores to unionize at once and expressed concern that unionized stores would not be given the same benefits as non-unionized stores. (Tr. 169.) The record does not disclose whether any other employees gave their opinions.

5 VII. *The April 18 Collaboration Session at the 1st and Pike Store for the Pike Place Store*

Respondent held a two-hour paid all-store meeting 1st and Pike for the Pike Place Store on April 18. (Tr. 176, 1062, 1278.) The meeting was held in the lobby of 1st and Pike. (Tr. 170; GCX 6.) Pike Place store manager Chairez-Carter and assistant store managers Dodge and C.J. Apostolou, attended the meeting along with the new district manager, Andrea Coster. The purpose of the meeting was to introduce Coster to Pike Place employees and hear employees' concerns regarding the approaching busy summer season. (Tr. 177-178, 1062, 1064, 1278-1279, 1520.) Regional director Tovey and a Human Resources partner named Rob Lawrence also attended the meeting. (Tr. 1278, 1520.) Neither Lawrence, a corporate partner resource manager, nor Tovey had attended a Pike Place all-store meeting prior to April 18. (Tr. 191, 1520.)

The collaboration session began with Coster and Tovey introducing themselves to the store employees. (Tr. 1067.) Chairez-Carter split the attendees into groups. (Tr. 178,1067.) The groups rotated in front of 10 large self-adhesive memo sheets that were displayed around the room. (Tr. 178, 1067, 1279, 1521.) The sheets had prompts written at the top, which Chairez-Carter and Coster drew from discussion materials previously used at Respondent's district meetings. (Tr. 177, 1069, 1070, 1280.) The prompts were:

- What Makes You Proud To Be a Partner?
- Let's Continue
- What Does Big Starbucks Need to Know?
- What Should Big Starbucks Start Doing?
- What Should Big Starbucks Stop Doing?
- What Does Our Store Need to Stop Doing?
- What Does Our Store Need to Start Doing?
- What Does Our Store Need to Continue Doing?
- What Does Our Store Need to Know?
- Misc./Parking Lot Ideas

35 (RX 5.)

The employees were asked to respond to the prompts on the sheets by writing their thoughts on sticky notes and posting the notes to the large sheets. (Tr. 178, 1067, 1279, 1521.) Tovey referred to this activity as a gallery walk. (Tr. 1227.) Each group was assigned a sheet to organize the attached notes into themes. (Tr. 180.) Then, a representative from each group shared the themes with the rest of the meeting attendees. (Tr. 1067, 1280.) The themes encompassed a wide range of working conditions. (Tr. 179, 1280, 1522; RX 9.)

The meeting ended with the announcement that the issues identified in the themes would serve as a foundation so everybody could be more solution-oriented at the next meeting on April 25. (Tr. 180.) The ideas would be shared with "leadership" and then discussed[.]" (Tr. 181.) At

that point, the meeting ended. (Tr. 181.) Tovey’s assistant memorialized the prompts and corresponding responses by creating a slide deck presentation that was shared the following day with Borton and Geoff Parker. (Tr. 1069, 1282; RX 5, 9.)

5 VIII. *Union Supporters Enter the Pike Place Store and Distribute Literature; Cook Informs Management*

10 On April 22, a group of 8 to 10 people came into Pike Place wearing Union shirts, hats, and pins. They waited in line, ordered drinks, and took pictures. (Tr. 183.) The group handed out half-sheets of paper with information about the Union and left some in the store. (Tr. 182, 183.) They stayed for about 15 minutes. (Tr. 181-182, 183.)

15 Pursuant to Chairez-Carter and Dodge’s<sup>14</sup> prior instructions to shift supervisors to immediately report any union representatives in the store, Cook texted store manager Dodge<sup>15</sup> to let him know that Starbucks Workers United supporters had been in the store and asked what to do next. (Tr. 183, 187; GCX 7.)

20 When Dodge called Cook to check on the situation, he instructed her to remove any union literature from the store that the group had left behind, which she did. (Tr. 186, 189.) Coster also called Cook later that day to check on the store after hearing about the visit. (Tr. 187-188.)

IX. *The April 25 Collaboration Session at the 1st and Pike Store for the Pike Place Store*

25 On April 25, Respondent held a second collaboration session for the Pike Place store as a follow-up to the April 18 meeting and the same managers and employees attended. (Tr. 190, 1064, 1065, 1072, 1073, 1282.) Chairez-Carter had invited CEO Schultz to attend. (Tr. 190, 1149, 1160, 1225, 1282.)

30 Schultz started the meeting by talking to the group for 20 to 45 minutes. (Tr. 193, 1073, 1161.) He explained how much the Pike Place store meant to him personally and told employees that he did not believe Starbucks needed a union. (Tr. 193, 1161-1162.) The floor was then opened to employees to ask Schultz questions. (Tr. 1074.) Cook spoke up and talked about how a group of Union supporters came into the store recently, scaring her, and that she also understood why partners at other stores were seeking additional support. (Tr. 194.) Employee Noah “Bjorn” DeBuhr told Schultz that he understood why partners were seeking union representation. (Tr. 195.)

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<sup>14</sup> Dodge testified that he was not aware of any organizing efforts related to Pike Place while he was an assistant store manager. (Tr. 1922-1923.) This is manifestly untrue: he received a text message from Cook informing him that Union supporters were in the store and had left flyers on April 22.

<sup>15</sup> The record does not disclose the date those instructions were relayed. Yet, when employees at the 1st and Pike store went on strike on June 18, Chairez-Carter gave a similar directive to Cook to call her right away if the striking employees came by Pike Place. (Tr. 86, 252-253; GCX 2, 3.) Therefore, I find it more likely than not that this directive was also given to Cook prior to April 22.

When the employee comments and questions ceased, Schultz told employees that big benefits were coming soon and to keep their eyes out for May 3; he then left the meeting. (Tr. 196.)

5 The focus shifted to the employee feedback from the April 18th meeting and the employees responded to a new set of questions on large sheets:

- How do you want to experience joy at work?
- How do you want to contribute?
- 10 • How do you want others to contribute?

(Tr. 1283; RX 9.) The same process followed as on April 18, including the memorialization and dissemination of the ideas generated at the meeting. (Tr. 197.)

15 On May 3, Schultz announced that, as result of direct feedback during his multi-city collaboration session tour, the company would double training hours, increase pay to recognize tenure, bring back a coffee expertise training program, and launch new collaboration programs. (GCX 21.)

20 X. *Creating the Heritage Market*

According to temporary regional vice-president Borton, the concept of the Heritage Market took shape shortly after the April 25 Pike Place collaboration session, during an in-person “weekly connect” meeting between her and Tovey in Borton’s office at the Starbucks headquarters in Seattle. (Tr. 668-669, 680.) This weekly connect occurred in either late April or the first week of May. (Tr. 825-826.)

Borton testified that it was Tovey’s oral report during the weekly connect that inspired the change in organizational structure for the Pike Place and 1st and Pike stores. (Tr. 669, 826-828.) Tovey shared with Borton how partners at Pike Place were interested in learning more about coffee, receiving more in-depth training, and becoming more involved with the community, specifically with the Pike Place Market. (Tr. 826-827.) Tovey interpreted the themes from the April collaboration meetings as partners needing more time to train, that they did not want the burden of unannounced tours, and they needed more time to prepare for the questions customers were asking of them. (Tr. 1454-1455.)

What came to be known as the Heritage Market was not based on any specific piece of employee feedback. (Tr. 1454-1455.) Borton was excited about what Tovey shared with her because she was looking at ways to get partners reengaged with each other and their customers as Seattle was coming out of COVID. (Tr. 829-830.) Tovey also expressed her belief that Pike Place was experiencing “times of change and unrest in the market and big groups coming to Seattle” that warranted a new approach. (Tr. 1456.) Tovey and Borton sought to create “elevated” roles for employees and an “elevated experience” at Pike Place. (Tr. 976-977, 1076, 1348-1349, 1529.)

45

Borton alone made the decision to create and implement the Heritage Market. (Tr. 670, 680-81, 1293-94.) Serving in a temporary regional vice-president role, Borton wanted to make an impact during her time-limited assignment. (Tr. 830-831; 974-975.) However, after her first meeting with Tovey, Borton had meetings with others, including partner resource leaders Geoff Parker and Mike Bersos where they discussed how they could respond to the feedback from Pike Place partners, and they “started coming up with ideas for how we could bring something to life that was innovative, and something new in an exciting way.” (Tr. 668; 830-832.)

Borton announced her plan to senior vice president Debbie Stroud and executive vice president Rossann Williams by email on May 6:

Leaders,

As we have spent recent time in collaboration sessions, store visits, shift meetings and store meetings we have heard partners and customers share how our Pike Place Stores (Pike Place Market and 1st & Pike) have a different meaning to our partners, customers, community, and brand- representing where we've come from, who we are, and what's possible as we lead forward in coffee, heritage and culture.

As such, we will immediately move to differentiate these stores from the rest of our portfolio. We will move both stores into a unique Heritage Market with differentiated roles and pay. This will require posting for all the new positions in each store. We will communicate this change to the partners who work in those stores on Monday and they will have the chance to apply for those openings which will go through a competitive process consistent with career progression.

Thank you,

Jessica

(Tr. 972-73; GCX 29.)

Borton testified that she made the decision to implement the Heritage Market without any personal knowledge of union activity at the 1st and Pike or Pike Place stores. (Tr. 975.)

#### XI. *Early Development and Planning for the Heritage Market*

After announcing her decision on May 6, Borton began working on implementation of the Heritage Market. (Tr. 973.) Borton had check-ins at least once a week on how the implementation was going and then started to ask different teams across the company to help as the Heritage Market was ramping up. (Tr. 973.) On May 6, Borton forwarded her announcement email to partner resources director Geoff Parker asking him to direct it onward to those who set up pay rates for new positions. (Tr. 673-674; GCX 29.)

On May 7, Borton and Tovey began a planning document to communicate the Heritage Market plan to Area 10. (Tr. 676-678, 702; GCX 30.) This draft referred to the inclusion of the 1st and Pike and Pike Place stores and discussed how tourists experience the “third place”<sup>16</sup> in those stores. (Tr. 677; GCX 30.) The draft framed the two stores as “represent[ing] where we’re from, who we are, and what’s possible as we lead forward in coffee, heritage and culture.” (GCX 30.)

By May 10, the plan was to move “forward with the simplest option of creating a new 3-store Heritage district w/ a 10% premium on Seattle wage.” (GCX 93.) The three stores identified were Pike Place, 1st and Pike, and University Village. (Tr. 1547-1549; GCX 93.) That day or the next, Respondent added 1st and University to the Heritage Market; the theme for the district was that the stores represented the “past, present, and future” of Starbucks. (Tr. 677, 683, 728-729, 763, 1024-1025; GCX 30, 31, 34.)

Borton expected all three of the Heritage stores to be functioning and open for business by July 4. (Tr. 708, 730, 740-742, 810-813; GCX 3.) July 4 was initially selected as the rollout date for the Heritage Market because it was at the turn of the new fiscal quarter and Borton preferred to start at the beginning of a quarter for corporate reporting purposes. (Tr. 833, 973.) Borton testified that at the time of acting CEO Schultz’s return, Respondent was interested in innovation and implementing new ideas quickly and “at scale.” (Tr. 1491-1492.)

Respondent’s announcements to employees at the Pike Place, 1st and Pike, and 1st and University stores began May 23. (Tr. 514-515, 535, 707.) The same day, Respondent physically and electronically posted the Heritage Barista and Heritage Shift Supervisor openings. (Tr. 1688-1689; GCX 12, 13.) The job descriptions for the Heritage Barista and Heritage Shift Supervisor positions were modeled after positions Respondent had created for its Siren<sup>17</sup> brand, which includes its Roastery<sup>18</sup> stores. (Tr. 1527-1529; GCX 42, 43.)

Store managers and district managers conveyed the decision through one-on-one conversations with every employee. (Tr. 1313.) On May 23, district manager Quesenberry<sup>19</sup> held

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<sup>16</sup> The “third place” as used by Respondent is a location other than work and home where people can linger comfortably, relax, and socialize. It has long been part of Respondent’s corporate culture and branding. See “A Major Shift at Starbucks is Changing its Personality” <https://www.cnn.com/2024/07/19/business/starbucks-mobile-orders-third-place> (last accessed May 27, 2026).

<sup>17</sup> My understanding is that Siren is a subsidiary of Respondent that is focused on a high end coffee experience.

<sup>18</sup> My understanding is that the Roastery stores serve higher end coffees, non-coffee beverages, and café food in a more “elevated” but still casual dining atmosphere.

<sup>19</sup> Quesenberry testified that she did not know of any union organizing at the three stores prior to the creation of the Heritage Market. (Tr. 2091-2092.) However, Cook testified that Quesenberry approached her about her feelings about the Union about February or March 2022 and Lopez testified that Quesenberry specifically asked her about ongoing organizing in March or April 2022. Therefore, I conclude that Quesenberry was at least concerned about Pike Place store employees engaging in union activity prior to the creation of the Heritage Market. I discredit Quesenberry’s denial of knowledge of union activity at the 1st and Pike store prior to the creation of the Heritage Market. Quesenberry does admit she learned of organizing at the 1st and Pike store when Tovey told her that the Union filed the petition at that store on June 6. (Tr. 2092.) Yet, she testified that she did not discuss union organizing at the three stores with

one-on-one meetings with each employee at the 1st and Pike store, primarily in person in the store. (Tr. 63, 64, 514-515, 585-586, 2054, 2061.) She informed them that 1st and Pike, Pike Place, and 1st and University were being grouped together into a newly created district called the Heritage Market to showcase Respondent's past, present and future. (Tr. 65.) The result, she explained, would be a new district with added job responsibilities and higher pay. Employees were told they would have to apply for these new jobs if they wanted to continue working in their current store. (Tr. 515, 564, 587, 623-624; GCX 25.)

In addition, in keeping with its usual practice, Respondent would not allow job applicants with discipline in the prior six months to be hired into the Heritage Market positions. (Tr. 232, 355.) Quesenberry informed employees that if they were not selected for the newly created Heritage Market, they would be transferred to other stores. (Tr. 564-565, 624.)

The Heritage Market employees were to be unable to borrow shifts at other stores and vice versa. (Tr. 763.) Instead, Heritage Market baristas and shift supervisors would be expected to work at all three of the Heritage Market stores. (Tr. 762-763.) They would receive the \$1-per-hour bonus for the peak season already paid to Pike Place store employees, as well as a pay increase equivalent to a "minimum" of a 5% raise over their current wage rates. (Tr. 515, 915, 1533; GCX 58, 61.)

The partners were provided with an FAQ sheet with the foregoing and other information partners would want to know about the change. (Tr. 984, 1313-1314; JX 2; RX 6.) Employees were directed to apply by scanning a QR code on a flyer posted in the back of the store. (Tr. 70, 2054.) That QR code provided a direct link to Respondent's job application system from which employees could apply for the new Heritage Market jobs. (Tr. 1676; GCX 12, 13.)

Approximately 100 employees were needed to function according to the Heritage Market plan. (Tr. 725-726, 739; GCX 24.)

## XII. *Respondent Communicates Heritage Market Selections to Employees*

The Union filed a representation election for the 1st and Pike store on June 6 with Region 19 (Seattle). (GCX 24.) On June 7, 1st and Pike employees sent a letter to interim CEO Schultz announcing their intention to form a union at 1st and Pike. (Tr. 627-628:16; GCX 25, 26.) The letter listed the employees' grievances and dissatisfactions with their terms and conditions of employment, including

We are undervalued and underrepresented as our positions are being jeopardized during our active terms of employment. We are being forced to give up our positions in order to provide other partners an opportunity to work at our "core" location. We are being forced to reapply for our positions under new terms and conditions, in addition to new preferred qualifications and requirements for the same position, one which we are not guaranteed.

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Chairez-Carter, Tovey, or Borton prior to that time. (Tr. 2092-2093.)

(GCX 25.) The letter was signed by Voytas, Arango, Van, and Yenifer Martinez Mendoza, as well as “the many partners who wish to remain anonymous,”

5 Tovey apparently planned to communicate the Heritage Market selections to employees on June 14 and then to close the locations on June 15 “to support the training and construction work needed to support the Heritage training and on-boarding.” (GCX 36.) On June 17 at 8:13 a.m., Tovey sent to herself by e-mail a list of the 48 hourly employees offered employment in the Heritage Market, 43 of whom had been employees of the component stores. (GCX 81.) The selections were communicated to Borton on June 17 at 5:37 p.m. (GCX 35.)

10 No employee testified to the day that they were actually notified whether they were selected. However, given the documentary evidence indicating that the selections were made by June 14 and that the employee strike followed on June 18, I find that employees likely began receiving notifications as early as June 17.

15 XIII. *On June 18, Employees at the 1st and Pike Store Went on Strike*

20 On the afternoon of June 17, Voytas posted a sign on the front door of the 1st and Pike store, stating “Closed 6/18 for labor strike due to unfair labor practices.” (Tr. 86, 512; GCX 4.) She then closed the store, along with employees Lopez and Whatley. (Tr. 543.) The following day, Voytas emailed a strike notice to Respondent, alerting management to the one-day strike employees planned in protest of the creation of the Heritage Market. (GCX 2, 3.) Employees Voytas, Van, Mangipudi, Jeremy Shen, Adam Mederos, Henry Osler, and Whittaker Grant signed the strike notice, which also referred to other employees who did not wish to be named. (GCX 2.)

25 The strike began at 6:00 a.m. on June 18. (Tr. 86.)

30 Respondent closed the 1st and Pike store on June 21 after the strike. (Tr. 129.)

XIV. *The Interview and Selection Process for the Heritage Market*

35 Respondent selected candidates for the newly created “elevated” Heritage Market roles through the competitive process because they would be receiving “a pay differential”. (Tr. 1083, 1084, 1317-1318.) Applicants for the newly created Heritage positions first submitted an online application. (Tr. 66.)

40 In the first round of hiring, partners who were employed at 1st and Pike, 1st and University, or Pike Place in spring 2022 were all given the opportunity to interview with a hiring manager for Heritage Market positions. (Tr. 1678.) To this end, corporate recruiter Sy Coleman planned a “hiring fair” (or “hiring event”) for applicants from the three stores. (Tr. 1679-1680.) Coleman explained Starbucks holds hiring fairs for large-scale hiring, with hiring managers to help interview candidates. (Tr. 1679.)

45 At the hiring event, which occurred June 14-16, hiring managers asked Heritage Market candidates interview questions Coleman had drafted. (Tr. 1683; GCX 24; RX 8, 11.)

When drafting the interview questions, Coleman referenced the questions used for similar elevated roles in Siren stores, such as the Roastery Reserve store in Seattle. (Tr. 1682.) Coleman then tailored the questions to specific Heritage Market needs. (Tr. 1682-1683.)

5 Tovey consulted with the district managers in her region to determine which would conduct the Heritage Market first round of interviews. (Tr. 1688.) Coleman attended the hiring fair and facilitated the interview schedule; he alerted candidates when it was their turn to interview. (Tr. 1689.)

10 The managers used standardized forms to record any notes at each interview. (Tr. 1392-1393.) They used Coleman's interview questions and only asked additional questions if needed to clarify an answer. (Tr. 1085-1086, 1596-1597, 1683, 1684, 1685, 1827, 1918-1919.) The interviews were conducted by teams of two: one asked the candidate the questions from the interview form while the other wrote notes on the candidate's responses. (Tr. 1597.)

15 After each interview, the interviewer team discussed whether they would recommend the candidate for hire. (Tr. 1597-1598.) The interviewers weighed the quality of examples candidates gave when answering questions and whether a candidate displayed leadership capability and a passion for service. (Tr. 1087, 1599, 1600, 1639-1640.) As a team, the interviewers made one hiring recommendation and provided their recommendation to Coleman. (Tr. 1086, 1598, 1639.)

20 Coleman collected the interview forms and provided them to Tovey at the end of the day. (Tr. 1689-1690.) Coleman also collected from the interviewees a list of three locations where they would like to work if not selected for the Heritage Market. (Tr. 1541, 1695.)

25 Based on the recommendations of the interviewing managers, and after confirming eligibility based on disciplinary record and consulting with Tovey<sup>20</sup>, Chairez-Carter<sup>21</sup>, having been promoted to Heritage Market district manager, made final hiring decisions for the Heritage barista and Heritage shift supervisor roles. (Tr. 1177-1178, 1321, 1392.)

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<sup>20</sup> Tovey testified that she knew that stores within her area were organizing because of the petitions filed and certifications that issued. (Tr. 1326:13-17). However, Tovey testified, prior to the implementation of the Heritage Market, she was not aware of any union organizing or support at Pike Place, 1st and Pike, or at 1st and University. (Tr. 1326-1327.)

<sup>21</sup> Chairez-Carter testified that she was not aware of any union organizing at Pike Place or 1st and University as either Pike Place store manager or Heritage Market district manager. (Tr. 1052.) Yet, Chairez-Carter also testified that she first became aware of union activity at the 1st and Pike store when the petition was filed on June 6, which was after the establishment of the Heritage Market had been announced. (Tr. 1052.) Therefore, she contradicted herself: she was aware of union organizing at 1st and Pike as Heritage Market district manager. Cook's testimony, moreover, was that Chairez-Carter and Dodge instructed her to inform them if the Union came by Pike Place, which she did on April 22. It is true that Cook only directly told Dodge; however, it strains credulity to expect one to believe that Dodge withheld this information from Chairez-Carter, his co-manager.

Partners who had a recently documented coaching were eligible for selection, but those with a corrective action at the level of a written or final written warning in the previous six months were not. (Tr. 1180; GCX 52.) Several employees who attempted to apply to the Heritage Market were unable to complete their application due to discipline that they had received; they were flagged by the system. (GCX 55.) Learning that information, Tovey and Chairez-Carter asked Starbucks' software administrators if they could make exceptions to allow such people to receive full consideration as potential Heritage Market employees. (GCX 55.) Per Tovey's request, Chairez-Carter and Dodge, provided a list of all known "corrective actions" that employees from their store had received. (GCX 97.) The lists were forwarded to corporate recruiter Coleman on June 13. (GCX 97.) Tovey and Chairez-Carter testified that while the disciplines were considered in hiring decisions, consideration was given to the nature of the discipline. (Tr. 1180-1184,1384-1386; GCX 52, 97.)

According to Tovey, receiving a positive recommendation from the interviewers was a necessary condition to move forward for consideration for a Heritage position. (Tr. 1392.) However, a positive recommendation did not guarantee that an applicant would be hired, as Respondent would also consult with those applicants' home store supervisors. (Tr. 1391.)

Coleman and other recruiters called the candidates and told them whether they were being offered a Heritage role. (Tr. 1088, 1691, 1684.) In the initial phase of interviews, approximately 30-40 partners were selected for roles within the Heritage Market. (Tr. 1088, 1394.) Generally, partners who were not selected—or who did not apply—were placed at one of the three stores they had requested. (Tr. 1695.) Some were placed at stores other than one of their three requests.

Management tracked partner applications and interviews. (Tr. 1395-1396; GCX 81.) To ensure that everyone who applied to Heritage Market had an opportunity to interview, in June, Starbucks managers had individual conversations with partners employed at 1st and Pike, 1st and University, and Pike Place who had not yet scheduled an interview for Heritage Market and reminded them to schedule interviews if they were interested. (Tr. 1184-1186; GCX 53.) Partners who wanted to interview but would be out of town during the initial hiring event were given virtual interviews. (Tr. 1186-1187, 1412-1413; GCX 54.)

After the first round of hiring, Heritage Market was not fully staffed. (Tr. 1088-1089.) To meet the desired target, the requisition was reopened in July. (Tr. 1088, GCX 58.) Chairez-Carter also circulated an announcement of the open requisition to the area partners throughout September. (Tr. 1210-1211; GCX 61.)

In subsequent rounds of hiring, applicants went through a screening process where a member of the recruitment team interviewed applicants before they were scheduled for an interview with a hiring manager. (Tr. 1659-1660.) One of Starbucks' corporate recruiters, typically Coleman, contacted applicants to schedule interviews with hiring managers. (Tr. 1679.)

XV. *Respondent Extends Heritage Market and Transfer Offers*

At least 88 employees were initially interviewed for a Heritage Market position, including 68 employees from Pike Place (43), 1st and Pike (16), and 1st and University (9) stores. (GCX 118.) Respondent extended offers to 48 applicants; one employee declined the offer and accepted a position with a different employer. (GCX 114(b).) Forty-three of the 47 acceptances came from employees of the three stores that comprise the Heritage Market. (GCX 114(b).) Among those hired were known Union supporters Skyler Blair, Whittaker Grant, and Tony Whatley. (Tr. 97-98, 142-143, 288-289, 536-537, 1608.)

Twenty-seven<sup>22</sup> of the remaining employees from those three stores—those who did not apply to work in the Heritage Market or whose applications were unsuccessful<sup>23</sup> were offered a transfer. (GCX 114(c).)

Among the unsuccessful applicants, 17<sup>24</sup> employees from the three stores applied for the Heritage Market but were rejected. (GCX 119.) Of those 17, 6 were transferred to stores that had recently unionized. Ira Mangipudi, Cooper Mayo, and Kalani Reeves were transferred to the 5th and Pike store (GCX 114(c).). Cook and Voytas were transferred to the East Olive Way store.<sup>25</sup> (GCX 114(c).) Abraham Patron was transferred to the Broadway and Denny store. (GCX 114(c).) The remaining 12 employees were transferred to various stores whose employees were not represented by a union. Among the 10 employees of the three stores who did not apply to work in the Heritage Market, Katherine Van was transferred to 5th and Pike, a represented store. (GCX 114(c).) The remaining 9 employees,<sup>26</sup> were transferred to various stores.

XVI. *The Unsuccessful Applicants<sup>27</sup> to the Heritage Market*

1. Pike Place Applicants

<sup>22</sup> 1st and Pike shift supervisor Cody Jones was promoted to an assistant store manager position at a core store. As the testimony at hearing was that all promotions required an application and interview, I infer that this promotion was based on an application he submitted about the same time as the Heritage Market application.

<sup>23</sup> This section does not include Cody Jones as per footnote 22, supra.

<sup>24</sup> Henry Osler, Abraham Patron, Ira Mangipudi, Jeremy Shen, Elizabeth Voytas, Daisy Lopez, Amanda Johnson, Kendall Chamberlain, Sabir Musa, Elizabeth Dion, Noah (“Bjom”) Debuhr, Sly Valen, Cooper Mayo, Kyle (“Kalani”) Reeves, Cassandra (“Cat”) Cook, Emilio Rodriguez-Ullrich, and Laura Johnson. This list does not include Sarah Pappin because she applied later in the Heritage Market staffing process.

<sup>25</sup> I take administrative notice that the Union was certified on June 15, 2022, in Case Number 19-RC-293131 as the collective-bargaining representative for an appropriate unit of employees at the East Olive Way store. Respondent closed East Olive Way approximately a month after Voytas and Cook were transferred there in late June 2022, and both were then transferred to Broadway and Denny. (Tr. 39, 113, 266, 269.)

<sup>26</sup> Adam Mederos, Katherine Van, Jordan King, Kaatje (“Kat”) Schmidt, Chloe Siekmeier, Grace (“Madden”) Armstrong, Harmony Mathison, Ivanna (“Ivanna Andrea”) Rangel, Trisha Fujiwara, and Tyler Whitaker.

<sup>27</sup> Partners who applied for Heritage Market roles but did not receive them were encouraged to implement interview feedback and re-apply in the future. (Tr. 1699-1700.) Respondent allows applicants to re-apply for any open role they previously applied for if the applicant waits 90 days before re-applying. (Tr. 1699.)

## a. Cat Cook

Cook testified at the hearing. On May 24, Pike Place store manager Chairez-Carter, regional director Tovey and district manager Coster met with Cook in the storage room. (Tr. 225, 226.) Chairez-Carter informed Cook that Respondent was creating the new district with three stores, which would showcase Respondent's past, present and future. (Tr. 227.) Chairez-Carter explained to Cook that the new district would require new expectations of employees, including working at all three locations, and that the roles would include a wage increase and all employees were required to reapply for their jobs if they wanted to remain at the Pike Place store once the Heritage Market was created. (Tr. 227.)

Cook asked Chairez-Carter if she could interview at a different time than the scheduled days in June because Cook had mouth surgery scheduled. (Tr. 228.) Chairez-Carter said she would look into it. (Tr. 228.) Two days later, on May 26, Pike Place management again announced the Heritage Market applications again in a shift supervisor meeting. (Tr. 229.) At the end of that meeting, Cook asked Chairez-Carter if the documented coaching she had received on May 19, for "failure to remain composed"<sup>28</sup> would inhibit her application. (Tr. 232; GCX 55.) Chairez-Carter said it would not. (Tr. 232.) Cook also asked Chairez-Carter again if she could interview on a different day due to her mouth surgery. (Tr. 222.) Chairez-Carter said it was unlikely. (Tr. 232-233.) Cook began her application process after the May 26th meeting. After having trouble with the QR code link, Cook applied online with the help of Dodge or Chairez-Carter to navigate the website. (Tr. 236.)

Cook's interviewers both gave her "Don't Recommend" ratings. (GCX 119.)<sup>29</sup> One noted that she had a "passion around the experience" but questioned her coaching approach. The other noted that they highly recommended her as a barista trainer but needed to "grow to be an active listener" and "work with shift team as a whole team." These concerns were echoed by Chairez-Carter at hearing. (Tr. 1323-1324.)

## b. Mayo Cooper

GCX 119 does not list Cooper and Cooper did not testify at hearing. There was no testimony about Cooper's experiences in the application process or interview.

## c. Kalani Reeves

<sup>28</sup> There is no contention that Cook's discipline on May 26 for a pattern of behavior in which Cook responded with tears and/or physical demonstrations of frustration to criticism of her at-work behavior was the result of animus. (Tr. 206-208, 247-248, 1120, 1124-1130; RX7.)

<sup>29</sup> On the General Counsel's motion, I received into evidence a subpoenaed portion of Respondent's chart form interview notes (GCX 119.) for the Heritage Market positions but the General Counsel elicited no testimony about the notes from any witness. Lacking any explanation of the purpose of the document or the context in which Respondent used it, I find the chart to be of very limited utility. The document has names of *some* candidates, the open position and location, the names of the two-person interview team; and the standardized rubrics (e.g. "The Starbucks Experience", "Living Our Mission and Values", and "Working Together") for the questions asked of the applicant based on the position, as well as the interviewing team's recommendations.

Reeves did not testify at hearing. GCX 119 recommends Reeves for hire with the notes entry: “Strong Strong Yes!!” Caley Litfin testified that she interviewed Reeves for Heritage Market but was not aware of his union sentiment or job performance at the time of the interview. (Tr. 1825.) Reeves was not selected, according to Respondent, as it was determined that his job performance before Heritage Market did not meet expectations to satisfy the “elevated experience that was required around customer and teamwork in the [M]arket.” (Tr. 1322-1323.)

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d. Sly Valen

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GCX 119 does not list Valen and Valen did not testify at hearing. There was no testimony about Valen’s experiences in the application process or interview.

2. First and Pike Applicants

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a. Kendall Chamberlain

GCX 119 does not list Chamberlain and Chamberlain did not testify at hearing. There was no testimony about Chamberlain’s experiences in the application process or interview.

20

b. Elizabeth Dion

Dion did not testify at hearing. GCX 119 shows she was recommended for hire with one notes entry: “Sharing coffee knowledge with customers, self driven, able to take feedback and apply”.

25

c. Amanda Johnson

GCX 119 does not list Johnson and Johnson did not testify at hearing. There was no testimony about Johnson’s experiences in the application process or interview.

30

d. Daisy Lopez

Lopez testified at hearing. Lopez, a part-time barista, applied for two positions in the Heritage Market: associate manager on June 2 and shift supervisor on June 4. (Tr. 517.) Lopez received a message on June 3 that she was disqualified from the associate manager position but did not receive an explanation. (Tr. 517.) Lopez was offered an interview on about June 10, which she scheduled for June 15. (Tr. 518.) She interviewed with Heritage Market district manager Chairez-Carter and Travis Allendale, a core store manager. (Tr. 519.) They read from a prepared list of questions. (Tr. 519.) Without any previous discussion of unions, Lopez asked whether it would still be part of the Heritage Market if the 1st and Pike store organized. (Tr. 519.) Chairez-Carter said that she did not know exactly. (Tr. 520.)

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On June 21, a recruiter informed Lopez that she did not get the shift supervisor position but did not explain why. Chairez-Carter testified that she and Allendale did not recommend

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Lopez because Lopez did not demonstrate an ability to lead the team and did not display any passion around coffee or the Starbucks culture. (Tr. 1086-1087.)

e. Ira Mangipudi

5 Mangipudi testified that she applied for a Heritage barista position and was not selected. (Tr. 2054-2055.) GCX 119 does not list Mangipudi and there was no testimony as to why she was not selected for hire. (Tr. 2056.)

10 f. Sabir Musa

GCX 119 does not list Musa and Musa did not testify at hearing. There was no testimony about Musa's experiences in the application process or interview.

15 g. Henry Osler

GCX 119 does not list Osler and Osler did not testify at hearing. There was no testimony about Osler's experiences in the application process or interview.

20 h. Abraham Patron

GCX 119 does not list Patron and Patron did not testify at hearing. There was no testimony about Patron's experiences in the application process or interview.

25 i. Jeremy Shen

GCX 119 does not list Shen and Shen did not testify at hearing. There was no testimony about Shen's experiences in the application process or interview.

30 j. Liz Voytas

Voytas testified at hearing. They testified that they applied for a Heritage Market position, however, interview times were only scheduled for two days and at times when they were in class. (Tr. 70-71.) Voytas asked store manager Welsh-Coleman for help, and Welsh-Coleman instructed them to contact recruiter Coleman for help. (Tr. 71, 1601.) Voytas did not contact Coleman to ask for an accommodation. (Tr. 1705.) Voytas rescinded their application before Starbucks interviewed them and before the initial hiring round was complete. (Tr. 1705-1706, 1751-1752.) The day after all interviews were complete<sup>30</sup> when Voytas asked Welsh-Coleman when the virtual interview would occur, Welsh-Coleman stated that the company could no longer accommodate them and Voytas would have to apply again when the jobs opened up to the general public. Voytas did not reapply for a Heritage Market position again. (Tr. 74, 1706.)

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<sup>30</sup> The record does not explicitly state the date of this conversation but I infer from the known dates of the hiring fair interviews that it was on June 16.

### 3. First and University Applicants

#### a. Laura Johnson

5 GCX 119 does not list Johnson and Johnson did not testify at hearing. There was no testimony about Johnson’s experiences in the application process or interview.

#### b. Emilio Rodriguez-Ullrich

10 Rodriguez-Ullrich did not testify at hearing. GCX 119 does not recommend him for hire and only shows one notes entry: “Does not demonstrate full leadership yet, recommend a couple more months as core SSV”.<sup>31</sup>

#### XVII. *Jo Cormier’s Heritage Market Application, Interview, and Rating*

15 Cormier testified at hearing. On June 14, Josie “Jo” Cormier, a 5th and Pike barista and open Union supporter, interviewed for the Heritage Market barista and shift supervisor positions at Respondent’s headquarters. (Tr. 403.) Bremerton-based district manager Annie Anderson and an unknown person interviewed Cormier for the Heritage Shift Supervisor position. (Tr. 407.)  
 20 Anderson told Cormier at the start of the interview that she recognized Cormier as a barista from 5th and Pike. (Tr. 407.) Cormier, in turn, recalled seeing Anderson at 5th and Pike, during the strike at that location; Cormier had participated in the picketing. (Tr. 394-395.)

25 Anderson asked Cormier what it would mean for them to work at the Heritage Market “given what was happening at the company.” (Tr. 409.) Cormier responded that Respondent could be a great company and Anderson turned and gave a skeptical glance to her interview partner. (Tr. 411.) Anderson then asked Cormier about a time where she had a different point of view from another partner or manager. (Tr. 411.) Cormier responded with an example of a disagreement with a partner. Anderson probed further, seeking a response to how Cormier would  
 30 handle a disagreement specifically with the company. (Tr. 411.) Cormier did not answer Anderson’s question but said that Starbucks can be a great company and they were excited to continue in that role. (Tr. 411.)

35 Coleman testified that the question posed to those interviewing for Heritage shift supervisor: “Tell me about a time you had a different point of view from your team manager or organization was copied from other Starbucks retail interview scripts, and there is nothing unique about this question being asked in the context of Heritage Market. (Tr. 1320-1322; 1685-1687; RX 11; JX 4.) Per Coleman, the purpose of this question was

40 to evaluate how [partners] deal with when they’re presented with a—a course of action in which they may not fully agree with, and how they come and they present themselves when that happens[.] . . . [W]e want partners to feel comfortable challenging, and we want partners to feel comfortable being able to speak their truth, but in a way that’s respectful, in a way that is going to be helpful

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<sup>31</sup> No explanation of the abbreviation “SSV” was offered or elicited at hearing but in context, I surmise that it stands for “shift supervisor”, a statutory employee.

towards the team[.]

(Tr. 1686-1687.) Tovey recalled being asked the same interview question multiple times throughout the years as she rose within the Company to regional director. (Tr. 1320-1321.)

5 Further, the record discloses that Respondent’s interviewers asked this question of multiple applicants. (GCX 121.)

Anderson followed up by asking Cormier how they would handle workers not enjoying working at Starbucks. Cormier replied that they were excited to work for Respondent. (Tr. 413.)

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GCX 119 rates Cormier as “Don’t Recommend.” The interviewers’ single note states: “[l]eading through others, how would she lead through a team[?]”.

Cormier testified that when she previously interviewed for a shift supervisor position at the 5th and Pike store, Respondent did not ask her about disagreements she had with the company or how she handled employees who did not enjoy working at Starbucks. (Tr. 415.)

15

A month after her Heritage Market interviews, Cormier again interviewed for a shift supervisor position at the 5th and Pike store; Respondent did not ask Cormier about a disagreement with the company. (Tr. 418-419.) Nor did Respondent ask Cormier about how she would handle partners who did not enjoy working for Starbucks. (Tr. 419.)

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#### XVIII. *Sarah Pappin’s Heritage Market Application, Interview, and Rating*

Fifth and Pike store shift supervisor Sarah Pappin<sup>32</sup> had a telephone interview with recruiter Coleman for a Heritage Market shift supervisor position on July 5. (Tr. 344.) Pappin had a follow-up interview in person at Respondent’s headquarters on July 12 with Chairez-Carter and Heitger, her former store manager. (Tr. 346, 347.)

25

On July 13, Pappin went to her then store manager Jer Mackler’s office to inform him that she had applied for a Heritage Market shift supervisor position. (Tr. 352.) District manager Ryan Lassiter, who had taken over for Quesenberry, was also in Mackler’s office at the time. (Tr. 352.) Lassiter informed Pappin that he was at the store in order to give her a final written warning for time and attendance. (Tr. 353.) The discipline involved attendance issues<sup>33</sup> from recent months. (Tr. 354.)

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The next day, recruiter Coleman called Pappin to inform her she did not get the Heritage Market position. (Tr. 355.) Pappin testified that she became ineligible for the Heritage Market position she had just interviewed for because she was no longer in good standing as she had received this final written warning. (Tr. 355.)

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<sup>32</sup> Pappin is not alleged to be a discriminatee. (Tr. 2114-2115.)

<sup>33</sup> I take administrative notice that my colleague Judge Montemayor found in Case Number 19-CA-292276 that Pappin’s discipline violated Section 8(a)(3) of the Act through stricter enforcement because of union activity. The case is pending before the Board on exceptions.

Neither Coleman nor Pappin testified that Coleman communicated to Pappin that the final written warning she received was the reason Pappin did not get the position. Pappin does not appear in GCX 119. However, Chairez-Carter testified that the interviewing team did not recommend Pappin for the Heritage shift supervisor role because she “did not demonstrate all of the leadership capabilities from the interview deck.” (Tr. 1115.)

XIX. Respondent Implements the Heritage Market

Borton estimated Respondent would need 100 employees working as baristas and shift supervisors in the Heritage Market. As of June 17, Respondent planned to make offers to approximately 47. (Tr. 725-726, 738-739; GCX 35; 54, 81, 114(b)-(c)). In the initial planning, employees were expected to work at their current home stores until starting work in the Heritage Market the week of July 4. (Tr. 1423.) However, according to Tovey, in order to avoid bad feelings on the part of those employees not selected for the Heritage Market, Respondent closed 1st and Pike and 1st and University on June 21. (Tr. 1423-1424.) Pike Place remained open. (Tr. 1426.)

Respondent projected that 5,274 customers would have placed orders at 1st & Pike during the week of June 20. (GCX 48.) 1,746 customers were expected to have visited and ordered at the 1st and University store had it remained open for that entire week. (GCX 49.) Pike Place, which remained open, was projected to serve 4,314 customers that same week. (GCX 49.)

On July 21, Respondent re-opened the Heritage Market’s barista and shift supervisor positions, and in doing so prepared new digital flyers with QR codes that linked to Heritage applications. (Tr. 1202; GCX 58.) The Heritage Market postings were now open to the Western Washington team. (Tr. 820-821.) As internal applicants were still the first priority, recruiter Coleman limited his recruiting strategies to distributing flyers and business cards and having word-of-mouth conversations with other partners, for example, during coffee tastings. (Tr. 1749-1750.)

In late July, Respondent internally announced plans to re-open the 1st and University store on a part-time basis by August 1. (Tr. 1204; GCX 59.) Borton explained one of the reasons for the delay in re-opening the store was that the store was going to undergo renovations related to both training and re-branding. (Tr. 741-742; GCX 37, 38.) For example, Respondent planned to renovate a back room at 1st and University into a training bar with a replica of the same manual espresso machine that is used at the Pike Place store. (Tr. 752-753, 1915-1916; GCX 37.)

On September 16, Chairez-Carter shared the Heritage Market barista and shift supervisor openings again. (GCX 61.) She emailed the other District Managers in Area 10:

We need 10+ partners in order to open 1st & Pike by the end of October so please share with your teams as we are looking for 1-2 partners from every district apply!

(Tr. 1210; GCX 61.)

Respondent maintained its restrictions against outside employees borrowing shifts into the Heritage Market. (Tr. 1205-1207; GCX 60.) In late August, Chairez-Carter discovered that Pier 55 partners were still borrowing into Pike Place and/or 1st and University. (Tr. 1205-1206; GCX 60.) Because Respondent had not yet been able to isolate the Heritage stores from the shift borrowing marketplace, she asked the managers of Pier 55 to manually remove their staff from the ability to borrow outward into the Heritage Market. (Tr. 1206-1207; GCX 60.) The same occurred with regard to the 5th and Pike store on October 6. (Tr. 1208; GCX 62.) As with Pier 55, Chairez-Carter asked the store manager of 5th and Pike to remove their partners from borrowing into the Heritage Market. (Tr. 1208; GCX 62.)

On October 6, Borton reiterated an earlier request to remove the three Heritage Market stores from the shift sharing system. (Tr. 815-817; GCX 51.) She explained that she was helping Tovey attempt to re-open 1st and Pike, which would be easier if the Heritage stores could be removed from that shift sharing system. (GCX 51.) The record does not disclose whether this request was fulfilled.

Respondent re-opened the 1st and Pike store on October 23 or 24. (Tr. 1209; GCX 62.)

XX. *Regional Director Hooks Dismisses the Union's Petition for 1st and Pike*

On November 3, following a pre-election hearing on July 19, Region 19 (Seattle) Regional Director Ronald Hooks dismissed the petition without prejudice on the ground that, as the 1st and Pike store was closed for renovations on the hearing date and the Heritage Market not fully functional or staffed, the petition was premature. (GCX 24.)

XXI. *The Heritage Market Status at the Time of the Unfair Labor Practice Hearing*

Respondent opened the Heritage Market's barista and shift supervisor positions to external applicants approximately 8 months after the Heritage Market was initially implemented. (Tr. 1750-1751.) At the time of hearing, Respondent continued to actively hire for the Heritage Market, and the Heritage barista requisition remained open on the Starbucks hiring website. (Tr. 1201; 1700.) The Heritage Market shift supervisor requisition was reopened periodically as needed. (Tr. 1700.)

Respondent developed the "Heritage 100" training program for Heritage Market stores. (Tr. 1860.) The program is based on combining Starbucks' standard Barista 100 core store training programs, the Siren sub-group's training program, and some training specific to the Heritage stores. (Tr. 1860, 1862, 1864.)

In addition, Respondent moved forward with its plans to conduct Heritage tours by hiring a Heritage Experience Manager to help train the Heritage Market partners in leading the tours for visiting partners and some contract vendors or licensees, but not the general public. (Tr. 1811, 1812-1813, 1852-1853.) Employees must complete the training within three months starting in the Heritage Market. (Tr. 1813-1814.) The tours began about June 2023. At the time of hearing,

Respondent still had plans to offer the Heritage tours to the public but there was no timeline in place for implementation. (Tr. 1853.)

#### ALLEGED UNFAIR LABOR PRACTICES

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#### I. *Respondent Did Not Solicit Grievances and Promise to Promptly Remedy Them at the April 18 and April 25 Collaboration Sessions*

Paragraph 6(c-d) of the complaint, as amended, alleges that in the collaboration sessions held on April 18 and 25, Respondent solicited employee grievances and promised employees that Respondent would promptly remedy such grievances.

Specifically, the General Counsel maintains that Pike Place store manager Chairez-Carter impliedly promised to remedy the grievances she solicited when she informed employees at the April 18 meeting that the purpose of the session was “to lay a foundation for next week when the meeting would be more solution oriented” (GC Br. 60.) and that employee’s responses to prompts “would be saved, shared with leadership, and then discussed.” (GC Br. 61.) Further, the General Counsel maintains that, on April 25, CEO Schultz directly solicited grievances from employees when, after explaining to them his connection to the Pike Place store and his opinion that they did not need a union, he invited the employees to speak up. (GC Br. 61.)

An employer may not solicit grievances during a union campaign where the solicitation carries with it an implicit or explicit promise to remedy the grievances and “impress[es] upon employees that union representation [is] . . . [un]necessary.” *Albertson's, LLC*, 359 NLRB 1341, 1341-1342 (2013), adopted at 361 NLRB 761 (2014), quoting *Amptech, Inc.*, 342 NLRB 1131, 1137 (2004), enfd. 165 Fed. Appx. 435 (6th Cir. 2006). The solicitation of grievances alone is not unlawful, but it raises an inference that the employer is promising to remedy the grievances. *Amptech*, 342 NLRB at 1137. The inference that the employer will remedy grievances is “particularly compelling” when the solicitation constitutes a significant deviation from the employer’s existing practice of addressing employee complaints. See *Center Service System Division*, 345 NLRB 729, 730 (2005), enfd. in relevant part 482 F.3d 425 (6th Cir. 2007).

Acknowledging that Respondent solicited grievances at the April 18 collaboration session only, I do not find that Respondent was promising to remedy grievances in the April 19 and 25 collaboration sessions in violation of the Act for two reasons. First, the record does not establish that there was an ongoing organizing campaign at the Pike Place store as of April 18 or April 25. Rather, the record shows that Respondent was aware at that time of the organizing campaign at the nearby 1st and Pike store, as well as of the union organizing generally occurring at its Seattle stores. The General Counsel’s theory of the violation for this allegation requires the extension of Board cases applicable to circumstances where there is employer knowledge of union activity to the circumstances here where the record does *not* reflect that Pike Place employees were themselves in support of the Union. The General Counsel has identified no factually similar Board case to apply—nor have I located one.

The General Counsel asserts that shift supervisor Cook’s interactions regarding the Union with Pike Place store managers Chairez-Crater and Dodge, assistant store manager Natalie Anderson, and district manager Quesenberry evince Respondent’s suspicion that the Pike Place

store's employees supported the Union. Cook was open with her managers that employees at *other* stores faced working conditions that might warrant the intercession of a union. Yet, she cooperated with management's efforts to remain apprised of union activity at her store and she professed fear and concern about the effect of unions on herself and Respondent's employees generally. Contrary to the General Counsel's contention, I find that management's repeated resort to Cook reflects a belief that she was neutral, if not actually opposed to the Union for herself.

The General Counsel also asserts (GC Br. 61-62, 65-66.) that interim CEO Schulz's invitation to employees to speak up and presence at a meeting where Respondent solicited grievances from employees was an implied promise to remedy them. I find that assertion unconvincing. Unlike the "high ranking official" in *Boars Head Provisions Co., Inc.*, 370 NLRB No. 124, slip op. (2021), Schultz did not solicit grievances from employees; he explained how much the Pike Place store meant to him personally and told employees that he did not believe Starbucks needed a union. The record reflects that the floor then was opened up for questions; Schulz did not ask employees to tell him how to address their concerns and avoid the Union like the Boar's Head official did.

Cook told Schulz that the Union had recently come into the store and scared her and Bjorn DeBuhr expressed that he could understand why partners were seeking union representation but did not indicate whether he supported the union himself. Although employees certainly do not have to disclose their union support to management, it is difficult to then conclude that management nevertheless knew about their support without other indications of activity and knowledge. Here, there are no such other indications.

Under the circumstances here, I conclude that there is insufficient evidence that employees<sup>34</sup> assigned to the Pike Place store were participating in a union campaign at their workplace and that Respondent knew of it on April 18 or April 25. See *MacDonald Machinery Co.*, 335 NLRB 319, 320 (2001) (no violation where employer expressed willingness to listen to employee complaints, solicited their grievances, and tried to resolve them before the advent of a union campaign).

Second, even if Board case law regarding the solicitation of grievances supported the General Counsel's view that an employer's suspicion of the existence of an active union campaign is the same as actual knowledge of one, there was already in place a corporate practice of soliciting employee feedback on working conditions in this case. It is well established that an employer with a past practice of soliciting employee grievances may continue that practice during a union's organizing campaign. *Wal-Mart Stores*, 340 NLRB 637, 640 (2003).

The record leads me to conclude that the collaboration sessions held at Pike Place were not substantively different than the various types of employee viewpoint solicitations conducted by Respondent in the past. Therefore, I reject the General Counsel's effort (GC Br. 63-65.) to finely differentiate the well-supported history of one-on-one daily check-ins, two-way feedback,

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<sup>34</sup> There was, obviously, union activity at the store in that Union supporters visited the store en masse and left flyers one day as reported by Cook to store manager Dodge and at hearing. However, there is no evidence that Pike Place store employees participated in the action or supported it.

gallery walks, town halls, shift supervisor meetings, road shows, and skip level meetings from the two collaboration sessions held at the 1st and Pike store on April 18 and April 25. *Longview Fibre Paper & Packaging*, 356 NLRB 796 (2011) (employer’s manner and method of soliciting grievances in this case did not deviate significantly from the Respondent’s practices prior to the union’s organizational campaign that utilized a variety of methods to ascertain employees’ concerns, solicit suggestions, and address issues as they arose).

In conclusion, I find that the General Counsel failed to establish that Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 6(c-d) and 9 of the complaint, as amended.

II. *Respondent Did Not Interrogate Jo Cormier at Her Heritage Market Shift Supervisor Interview*

Paragraph 7 the complaint alleges that about June 14, during interviews for Heritage Market positions, Respondent, by Assistant Store Manager Annie Anderson, interrogated its employees about their union activities and support in violation of Section 8(a)(1) of the Act. This paragraph refers to 5th and Pike barista Jo Cormier’s interview for a Heritage shift supervisor position.

“The questioning of an employee about union activities or sympathies constitutes unlawful interrogation ‘if, under all the circumstances, it reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act.’” *Shamrock Foods Co. v. NLRB*, 346 F.3d 1130, 1137 (2003), quoting *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830, 835 (D.C. Cir. 1998) (internal quotation marks omitted). This involves a case-by-case analysis of various factors, including those set out in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): (1) the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; (2) the nature of the information sought; (3) the identity of the interrogator, i.e., his or her placement in the Respondent’s hierarchy; (4) the place and method of the interrogation; and (5) the truthfulness of the interrogated employee’s reply. See, e.g., *Sproule Construction Co.*, 350 NLRB 774 fn. 2 (2007).

The General Counsel argues (GC Br. 67.) that, although no mention was made of Cormier’s support of the Union, because assistant store manager Annie Anderson informed Cormier that she recognized her from the 5th and Pike store at the start of the interview and, during the interview, Anderson asked Cormier “three times” what she would do if she had any disagreements with the Company. Thus, the General Counsel concludes that, under the totality of the circumstances, Anderson coercively interrogated Cormier during this interaction. This is so, the General Counsel reasons, because Cormier, who had participated in the picketing, recognized Anderson from the strike at 5th and Pike several weeks before the interview but did not recall ever seeing Anderson at 5th and Pike at any other time. Further, according to the General Counsel, the question that Anderson asked was not in the interview script. The General Counsel’s reasoning here is based on incorrect premises and reflects mere speculation.

In *Aloha Temporary Service, Inc.*, 318 NLRB 972, 973-974 (1995) (salting and interrogation), a management official interviewed an applicant for multiple open positions and asked the applicant whether he knew any of the people in the waiting room. The applicant falsely

denied knowing the two people who were in the waiting room, one of whom was a known union organizer, and was hired.

5 Using the *Rossmore House*, 269 NLRB 1176 (1984), enfd. 760 F.2d 1006 (9th Cir. 1985), test taking all surrounding circumstances into account, the judge found that, while on its face the manager’s question was noncoercive, the manager asked the applicant who was hired whether he knew anyone in the waiting room to determine the applicant’s status with regard to the union. *Aloha*, 318 NLRB at 975. Thus, the “only reasonable inference” was that the manager wanted to know if the applicant was associated with the union. Ibid. The Board affirmed the judge’s findings and conclusions as to the interrogation. Id. at 972.

15 In the instant case, it is certainly not the “only reasonable inference” that Anderson was homed in on Cormier’s known union activity during the interview. It does not necessarily follow that because Cormier did not remember Anderson from the 5th and Pike store except for the day of the strike that Anderson was never present at the 5th and Pike store other than on that day and was referring to seeing Cormier on the picket line when she probed Cormier’s likely behavior if they disagreed with the company. Cormier actually worked at the 5th and Pike store. Anderson could have seen them there at any time—even if Cormier did not remember seeing Anderson.

20 Second, the General Counsel incorrectly contends (GC Br. 67.) that Anderson’s question to Cormier was not in the Heritage Shift Supervisor interview questions, which states in relevant part: “Tell me about a time when you had a different point of view from your team, manager, or organization.” (JX 4.) While certainly not the same words that Cormier testified to, the question is materially the same.

25 Respondent asked this question of multiple applicants for Heritage Market positions. (GCX 121.) Recruiter Sy Coleman credibly testified at length about this question’s inclusion in the Heritage shift supervisor interview question list and its purpose in the interview process. Regional director Tovey confirmed that she was asked the same question at multiple interviews in her long career at Starbucks. There is no basis here to conclude that an employee would have reasonably believed that Anderson posed the question to interrogate their union support or activities.

35 In conclusion, I find the General Counsel failed to establish that Respondent violated Section 8(a)(1) of the Act as alleged in paragraphs 7 and 9 of the complaint, as amended.

### III. *Respondent’s Implementation of the Heritage Market and Attendant Hiring and Reassignments Did Not Violate the Act*

40 Paragraph 8 of the complaint, as amended, alleges that, about late June/early July, in violation of Sections 8(a)(3) and (1) of the Act, Respondent (1) implemented its three-store Heritage Market, “the first ‘district’ comprised of so few stores and characterized by regular interchange of employees and common management in the country”; (2) failed and refused to re-hire approximately 29 of the 73 total employees previously working in the three downtown Seattle stores, including 17 of the 22 employees previously working in the 1st & Pike store; (3) granted raises and new benefits to the 40 employees re-hired into their positions and all other employees hired into the new Heritage Market; and (4) denied the same raises and benefits to the

29 employees it did not re-hire into the Heritage Market and caused their forcible transfers or constructive discharges. These acts are alleged to be in violation of Section 8(a)(3) of the Act.

5 The General Counsel asserts (GC Br. 73-75.) that Respondent’s motive<sup>35</sup> in creating and staffing the Heritage Market as it did was to safeguard the Pike Place store. In particular, the first store was so important to Respondent as a corporate symbol that concern about the cancer of unionism spreading from the nearby 1st and Pike store caused Respondent to create the Heritage Market to protect the Pike Place store.

10 Respondent defends (R. Br. 2.) that “[t]he creation of the Heritage Market was a business reorganization within Starbucks’ entrepreneurial rights[]” and “[t]here is no evidence Starbucks acted with any improper motive in creating the Heritage Market.” Specifically, Respondent denies (R. Br. 2-3.) that it had any knowledge of union organizing at any of the three stores when regional vice president Borton conceptualized the Heritage Market following the April 18 and April 25 collaboration sessions and contends (R. Br. 3.) that the General Counsel presented “no  
15 evidence of discriminatory intent in [the] creation and implementation of the Heritage Market, including in its hiring decisions with respect to the elevated Heritage Market positions.”

20 Mixed motive allegations are subject to the test set forth in *Wright Line*. To establish a violation of Section 8(a)(3) under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). The General Counsel must first show, by a preponderance of the evidence, that an employee’s union activities were a motivating factor in the employer’s decision to take adverse action against the employee. *Intertape Polymer Corp.*, 372 NLRB No. 133 (2023). The elements required to support a finding of discriminatory motivation are union  
25 activity by the employee, employer knowledge of that activity, and antiunion animus by the employer. *Wright Line*, 251 NLRB at 1089.

30 Once the General Counsel has met her initial burden under *Wright Line*, the burden of persuasion shifts to the employer to “demonstrate that the same action would have taken place even in the absence of the protected conduct.” *Wright Line*, 251 NLRB at 1089. However, to meet its *Wright Line* defense burden, “[a]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity.” *W. F. Bolin Co.*, 311 NLRB

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<sup>35</sup> The General Counsel proffers support (GC Br. 72.) for this theory in interim CEO Schultz’s statement in the early April video recording viewed by all employees that Starbucks had not needed a union in 51 years and did not need one now. The General Counsel’s brief incorrectly attributes this statement to the April 25 collaboration meeting for the Pike Place store. However, at the April 25 meeting, the record reflects that Schultz said he did not believe Starbucks needed a union. This is a slightly different statement. In any event, it is consistent with well-developed Board jurisprudence that both of these statements are protected First Amendment speech under Section 8(c) of the Act when, as here, there is no accompanying impression of futility or other threat. See *Rogers Elec., Inc.*, 346 NLRB 508, 510 (2006) (company president’s statement to employees formally contacting state government officials was not the best way to get matters changed equivalent to protected 8(c) statement “no different in kind from one in which an employer tells employees there is no need to call a union in to resolve issues.”) (citing *Howard Johnson Co.*, 242 NLRB 386 (1979) (telling employees that company was convinced they did not need a union because it would “only make things more difficult for all of us” not violative, since it “merely sets forth [the employer’s] views on the disadvantages of unionism and does not impart a threatening meaning”).

1118, 1119 (1993), petition for review denied 70 F.3d 863 (6th Cir. 1995), enfd. mem. 99 F.3d 1139 (6th Cir. 1996).

A. The Creation of the Heritage Market Did Not Violate the Act

5 The complaint, as amended, alleges in paragraphs 8(a) – 8(c)(i) and 8(d), that the Heritage Market was created to discourage its employees from organizing.

10 Applying the *Wright Line* elements, the record establishes that employees of the 1st and Pike store began their organizing activities as early as April 2022 but fails to establish that employees of either the Pike Place store or the 1st and University stores engaged in any union or organizing activities before the Heritage Market was conceptualized in the days after the April 25 collaboration meeting.

15 I have found above that district manager Quesenberry, an admitted 2(11) supervisor and 2(13) agent, knew about that union activity at the 1st and Pike store in April 2022. As such, her knowledge is imputed by the Board to Respondent as a whole. *Pinkerton's Inc.*, 295 NLRB 538 (1989) (activities, statements, and knowledge of a supervisor are properly attributable to the employer).

20 The General Counsel posits that animus for this allegation should be inferred from the merit recommended by the Board's administrative law judges in other unfair labor practice cases locally in the Seattle area, with some involving this case's admitted 2(11) supervisors and 2(13) agents Quesenberry, Schultz, or Tovey, as well as unfair labor practice cases that have been decided by NLRB judges nationwide. (GC Br. 69-70, 75.) In support, the General Counsel cites *Mid-Mountain Foods*, 332 NLRB 251 fn. 2 (2000), enfd. mem. 11 Fed.Appx. 372 (4th Cir. 2001), in which the Board found animus in a recent case it decided not long before that involved the same actors in several violations.

25 None of the Board decisions<sup>36</sup> referenced by the General Counsel (GC Br. 73-75.) meet the criteria to which the Board refers in the *Mid-Mountain Foods* footnote cited. The Board cases referenced by the General Counsel do not involve the same actors. Further, although two administrative law judge decisions<sup>37</sup> referenced by the General Counsel do involve admitted supervisors and agents named in the instant complaint, neither of the two judges' decisions have been affirmed by the Board. The judges' decisions themselves are, of course, non-precedential.  
30 As such, I cannot see how those cases can be relied upon to establish animus in this case.

I find that although there was known union activity at the 1st and Pike store, there is insufficient evidence of animus<sup>38</sup> to establish that Respondent created the Heritage Market in

<sup>36</sup> *Starbucks Corp.*, 373 NLRB No. 53 (2024) (Wisconsin); *Starbucks Corp.*, 373 NLRB No. 48 (2024) (New Jersey); *Starbucks Corp.*, 373 NLRB No. 44 (2024) (Michigan); *Starbucks Corp.*, 373 NLRB No. 21 (2024) (Florida); *Starbucks Corp.*, 372 NLRB No. 122 (2023) (Michigan); *Starbucks Corp.*, 372 NLRB No. 93 (2023) (Seattle, Washington); *Starbucks Coffee Co.*, 372 NLRB No. 50 (2023) (Pennsylvania).

<sup>37</sup> Case Numbers 19-CA-292276 (involving Quesenberry) and 19-CA-294579 (involving Schultz).

<sup>38</sup> In the event that the Board disagrees with my recommendation regarding animus, I also find that Respondent has established that it would have created the Heritage Market absent employee union activity. The General Counsel's argument (GC Br. 76-78.) here generally amounts to finding fault with the disorganized, unprofitable, and rushed manner of implementation for the Heritage Market, which the

order to discourage its employees from engaging in union activity. Therefore, I find that the General Counsel failed to establish a prima facie case with regard to the creation of the Heritage Market.

5 Accordingly, complaint paragraphs 8(a) – 8(c)(i), 8(d), and 10 as amended, are dismissed.

B. The Heritage Market Hiring Process Did Not Violate Section 8(a)(3) of the Act

10 The complaint, as amended, alleges in paragraphs 8(c)(ii) and 8(d) that Respondent failed and refused to hire approximately 29 of the 73 total employees who previously worked in the three downtown Seattle stores, including 17 of the 22 employees who previously worked in the 1st and Pike store in violation of Section 8(a)(3) of the Act.

15 The General Counsel relies on *FES (A Division of Thermo Power)*, 331 NLRB 9, 12 (2000), supplemented 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002) and as modified in *Toering Electric Co.*, 351 NLRB 225 (2007),<sup>39</sup> to analyze Respondent’s refusal to hire certain employees who had previously worked in the Pike Place, 1st and Pike, and 1st and University stores.

Pursuant to *FES*, the General Counsel must, under the allocation of burdens set

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General Counsel argues evinces pretext.

Respondent does not appear to dispute the General Counsel’s criticisms of its implementation process but only the ultimate meaning of those flaws. I agree.

In *Electrolux Home Products, Inc.*, the Board rejected the administrative law judge’s conclusion that because the employer’s rationale for discharging an employee was pretextual, the real reason for her discipline was her union activities. 368 NLRB No. 34, slip op. at 1 (2019). The Board explained that such a conclusion may be inferred but is not compelled. *Id.*, slip op. at 3. Rather, “only where. . . the surrounding facts tend to reinforce that inference” can the general counsel rely on pretext to carry her burden to prove unlawful motivation. *Ibid.* (citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) and *Active Transportation*, 296 NLRB 431, 432 fn. 8 (1989), enfd. 924 F.2d 1057 (6th Cir. 1991)).

In this case, I cannot agree with the General Counsel that the surrounding facts tend to reinforce the inference of pretext simply because Respondents creation of the Heritage Market was disorganized, unprofitable, and rushed. Temporary regional vice-president Borton and regional director Tovey testified credibly and exhaustively about the decision-making and implementation processes involved in creating the Heritage Market. Borton admitted that she sought to make an impact in her short-term appointment and was solely responsible for creating the Heritage Market and setting the implementation timeline. Borton was looking at ways to get employees reengaged with each other and their customers as Seattle was coming out of COVID at the same time that Tovey had expressed her belief to Borton that a new approach was warranted for the Pike Place store. The Heritage Market was the result. The testimony disclosed that Borton drew upon significant corporate human and financial resources to bring the Heritage Market to fruition and there was no documentary or testimonial evidence presented that disclosed animus behind these processes.

In summary, even if I were to conclude here that the General Counsel had established a prima facie case, I would also conclude that she did not carry her ultimate burden to prove a nexus between the creation of the Heritage Market and any general animus held by Respondent.

<sup>39</sup> See *US Foods, Inc.*, 364 NLRB 2022, 2023 fn. 1 (2016) (the Board applies *FES* to assess refusal-to-hire and refusal-to-consider allegations).

forth in *Wright Line*, supra, first show the following at the hearing on the merits: (1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct;<sup>40</sup> (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that union animus contributed to the decision not to hire the applicants.

If the General Counsel meets her burden and the respondent fails to show that it would have made the same hiring decisions even in the absence of union activity or affiliation, then a violation of Section 8(a)(3) has been established.

Respondent argues (R. Br. 80-84.) that the General Counsel has failed to establish a prima facie case in that her evidence of animus was non-existent—or, at most, generalized mere speculation—and there was shown no nexus between any such animus and the failure to hire 17 former employees as alleged. Further, Respondent argues that a lack of animus is demonstrated by its hiring of three known union supporters for the Heritage Market: Skyler Blair, Whittaker Grant, and Tony Whatley. Rather, Respondent defends (R. Br. 84-85.) that its Heritage Market hiring process for Heritage baristas and Heritage shift supervisors was open to all employees of the three constituent stores and its hiring criteria were neutrally applied in a competitive process.

Applying *FES* to the facts of this case, it is undisputed that Respondent was hiring Heritage baristas and Heritage shift supervisors to staff the Heritage Market.

Turning to the second element, the General Counsel’s evidence at hearing and arguments on brief (GC Br. 81-83.) chiefly explored a putatively *disqualifying* general company promotion rule—whether the applicant had discipline within the past six months—to argue it was applied in a disparate manner to the non-selected applicants. Yet, the documentary evidence (GCX 40-43.) received at hearing reveals the announced requirements for the Heritage barista and Heritage shift supervisor positions. The General Counsel argues (GC Br. 81.) that because they were already working in the stores that comprise the Heritage Market, “the evidence conclusively establishes that all the applicants...had the job experience relevant to the stores.”

Respondent’s position (R. Br. 85.) has been consistent that the Heritage Market positions are “elevated” positions with higher expectations and appropriately higher pay. Accordingly, the Heritage barista position description (GCX 42.) differs significantly from the core barista position description. (GCX 40.) The first significant difference is that the core baristas are assigned to one store—though they may borrow into other stores if desired. Heritage baristas “will work in all locations inside of the Heritage Market on a regular basis and may move between locations during a shift.” As such, a Heritage barista’s role requires working in multiple positions within different stores across the Heritage Market, performing different tasks during each shift. This is not required of core baristas.

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<sup>40</sup> The showing of an available opening entails a showing that the applicant had experience or training relevant to the announced or generally known requirements of the opening. *GM Electrics*, 323 NLRB 125, 128 fn. 13 (1997) (the General Counsel showed availability of jobs for applicants by evidence that applicants were ‘journeyman electricians’ who applied for “journeyman electrician” positions)..

Moreover, while no previous experience is required for a core barista, a Heritage barista must have at least 1 year of customer service or equivalent and two years is preferred. A Heritage barista must be able to carry 35 pounds on a consistent basis, which is not a requirement for a core barista. Having command of “additional languages” is listed as beneficial for Heritage baristas—and having taken the company’s “Coffee Education” course series is preferred. These are not preferred skills and education for the core baristas.

Likewise, the Heritage shift supervisor position description (GCX 43.) differs significantly from the core shift supervisor position (GCX 41.). As with the Heritage barista position, Heritage shift supervisors work in all locations and may work in different locations and in different roles within a shift. Core shift supervisors do not have any such requirement. While core shift supervisors need one year of customer service experience or equivalent, two years are preferred for Heritage shift supervisors. Core shift supervisors’ basic qualifications include at least 6 months of experience delegating tasks to other employees or coordinating the tasks of 2 or more employees but Heritage shift supervisors must have experience delegating tasks of 3 or more employees. A Heritage shift supervisor must be able to carry 35 pounds on a consistent basis, which is not a requirement for a core shift supervisor.

A Heritage shift supervisor’s knowledge, skills, and abilities include 2 years of Starbucks experience, which is not a requirement for core shift supervisors. Other requirements for only Heritage shift supervisors are that the applicant be barista trainer certified or have the ability to become certified; the ability to lead shifts in multiple stores across the Heritage Market; high attention to detail, strong work ethic, ability to multitask, and prioritize in a rapidly changing environment, demonstrated skill in understanding and storytelling of Starbucks culture and history; effective written communication skills; and ability to “meet” store operating policies and standards. None of the foregoing is a requirement of a core shift supervisor.

Also preferred for Heritage shift supervisors but not core shift supervisors are certification on all brew methods, having taken the “Coffee Education” course series, and the ability to speak additional languages.

Other than their years of experience in their positions while working for Respondent, the General Counsel did not establish that the applicants who were not selected for the Heritage Market had any of the basic qualifications; the required knowledge, skills, and abilities; or the preferred skills and education set forth in the Heritage barista and shift supervisor position descriptions. Nor did the General Counsel examine whether the selected applicants possessed them, which could indicate that these qualifications were applied as a pretext for discrimination. The General Counsel therefore failed to establish the second required element of a prima facie case alleging failure to hire under *FES*.

Because I find that this failure to establish the second element of the *FES* prima facie case dooms complaint paragraphs 8(c)(ii) and 8(d) to failure, my inquiry ends here.

Accordingly, complaint paragraphs 8(c)(ii), 8(d), and 10, as amended, are dismissed.

C. The Terms and Conditions of Employment Granted Only to Heritage Market Employees Did Not Violate the Act and Respondent Did Not Constructively Discharge the Employees Not Selected

5 Complaint paragraph 8(c)(iii) alleges that Respondent granted raises and new benefits to the 40 employees re-hired into their positions and all other employees hired into the new Heritage Market. Complaint paragraph 8(c)(iv) alleges that Respondent denied the same raises and benefits to the 29 employees it did not re-hire into the Heritage Market and caused their forcible transfers or constructive discharges.

10 I view the portions of these two complaint paragraphs regarding wages and benefits as necessarily dependent on the allegation from complaint paragraph 8(c)(ii), which alleges that Respondent failed and refused to hire approximately 29 employees who previously worked in the three stores. If Respondent did not discriminate in its hiring for the Heritage Market store, I cannot see how it could be found to have discriminatorily granted those hired the wages and benefits attendant to those positions or withheld those same wages and benefits from those who  
15 were not hired. Nor did the General Counsel separately brief those allegations.

The General Counsel also, correctly, views (GC Br. 84.) the constructive discharge aspect of complaint paragraph 8(c)(iv) as derivative of paragraph 8(c)(ii). However, the constructive discharge allegation is subject to its own analysis.

20 A constructive discharge “is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances [that] surrounded it.” *Remodeling by Oltmanns*, 263 NLRB 1152, 1161 (1982), enf.d. 719 F.2d 1420 (8th Cir. 1983). The Board recognizes two theories of constructive discharge (1) the “traditional” theory and (2) the “Hobson’s Choice”<sup>41</sup> theory.

25 Under the traditional theory, which the General Counsel is arguing here, a constructive discharge occurs when an employee quits because his or her employer has deliberately made working conditions unbearable and the General Counsel proves that (1) the burden imposed on the employee caused, and was intended to cause, a change in the employee’s working conditions so difficult or unpleasant that the employee is forced to resign, and (2) the burden was imposed  
30 because of the employee’s union activities. *Yellow Ambulance Service*, 342 NLRB 804, 807 (2004); *Intercon I (Zercom)*, 333 NLRB 223, 223 fn. 3 (2001). Regarding the first part of the legal standard, the “test for intent is not limited to whether the employer specifically intended to cause the employee to quit, but includes whether, under the circumstances, the employer reasonably should have foreseen that its actions would have that result.” *Yellow Ambulance  
35 Service*, 342 NLRB at 807.

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<sup>41</sup> Under the Hobson’s Choice theory of constructive discharge, an employee’s voluntary quit will be considered a constructive discharge when an employer conditions an employee’s continued employment on the employee’s abandonment of his or her Section 7 rights and the employee quits rather than comply with the condition. *Titus Electric Contracting, Inc.*, 355 NLRB 1357, 1357 (2010); *Intercon I (Zercom)*, 333 NLRB 223, 223 & fn. 4. The Hobson’s Choice at issue must be clear and unequivocal and the employee’s predicament not one which is left to inference or guesswork. *Intercon I (Zercom)*, 333 NLRB at 224 & fn. 9.

The General Counsel contends (GC Br. 85.) that, in requiring employees to apply to work in the Heritage Market, Respondent deliberately made working conditions unbearable and caused and intended to cause a change in working conditions so difficult or unpleasant that employees had to resign or refuse to apply to work in the Heritage Market. Respondent's brief does not specifically address the General Counsel's constructive discharge theory but generally argues (R. Br. 85.) that the decisions surrounding hiring for the Heritage Market were made in a non-discriminatory manner through a competitive process, which did not take into account any applicant's union activities or sympathies.

I reject the General Counsel's argument that by requiring current employees to apply and interview in order to work in the Heritage Market stores and/or transferring to stores that were not their preferred locations those employees who were unsuccessful, Respondent caused, and intended to cause, a change in the employee's working conditions so difficult or unpleasant that employees were forced to resign. Likewise, I reject the contention that elective participation in the application and interview process for the Heritage Market was a condition so onerous that it warranted simply quitting instead. Similar Board cases are thin on the ground but helpful in illustrating my reasoning here.

In *El Paso Natural Gas Company*, 193 NLRB 333 (1971), the trial examiner recommended that the employer had constructively discharged a known union supporter, Isham, whom the employer had interrogated, by transferring him. The employer had also threatened employees with disrupting their lines of communication to interfere with union activity and a "minor" supervisor had denied a different employee's request for time off. The Board considered the employer's exceptions contending that the transfer was merely the result of changing its method of gas testing and was supported by a legitimate and substantial business justification. The Board found merit in the employer's exceptions and overruled the trial examiner.

The Board determined that the employer's evidence that showed that the decision to change its testing method had been made four years prior to Isham's transfer and the abolishment of his job classification, gas testers, was incidental to the change in testing method. Based on seniority, the employer had asked the gas testers and the measurement technicians (whose jobs were also abolished) in which district they wanted to work. Isham wanted to continue to work in his current district but, due to his seniority, he was offered a transfer to different one. He refused to accept the transfer and quit. The Board found that "the evidence fails to raise more than a mere suspicion that [r]espondent was motivated by other than legitimate business considerations in transferring employee Isham, and that Isham acted at his peril in refusing to accept this transfer."<sup>42</sup> Id at 334.

In *San Antonio Portland Cement Company*, 277 NLRB 338 (1985), in an atmosphere tainted by the employer's failure to bargain unfair labor practices, the Board nonetheless agreed with the administrative law judge who rejected the allegation that an employee was removed from his job classification and reassigned to a lower paid job classification as retribution for his union activities or because of his testimony in support of the newly certified union in the

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<sup>42</sup> Not relevant to my analysis here, the Board also found that the record of union activity was sparser than did the trial examiner and noted that eight months had elapsed between interrogation and threats and the denied time off request.

representation hearing. *Id.* at 352. The judge concluded that there was no basis for attributing a discriminatory motive to reassigning the employee, which was incidental to a lawful reorganization and carried out based on seniority. *Ibid.* The judge reasoned that the credited evidence established that the reorganization was long contemplated and there was no evidence to show that it was rigged to accomplish retribution against the employee. *Ibid.* That the employee found his new duties “onerous, unpleasant, distasteful, or unacceptable does not, in the total circumstance, serve to supply the unlawful motive essential to the General Counsel’s case, or to establish a constructive discharge.” *Id.* at 352-353.

In the instant case, as in the *El Paso Natural Gas Company* and in *San Antonio Portland Cement Company* reorganizations, I have found the creation of the Heritage Market lawful and devoid of specific animus. I have also found that the Heritage Market barista and shift supervisor positions differ substantially from the core versions of those job classifications. I cannot conclude that by inviting current employees to apply for these Heritage Market positions with substantially more requirements and desirable skills, Respondent deliberately made working conditions unbearable and caused and intended to cause a change in working conditions so difficult or unpleasant that employees had no alternative but to resign or refuse to apply. The employees who elected not to apply to the Heritage Market, like employee Isham in *El Paso Natural Gas*, simply acted at their peril.

As the General Counsel has not satisfied the second element of a traditional constructive discharge theory, my inquiry ends here.

Accordingly, complaint paragraphs 8(c)(iii), 8(c)(iv), 8(d), and 10 are dismissed.

#### CONCLUSIONS OF LAW

1. The Respondent, Starbucks Corporation, is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.
2. The Charging Party, Workers United Labor Union International, Affiliated with Service Employees International Union is and has been at all material times a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent did not violate the Act in any manner alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>43</sup>

#### ORDER

The complaint is dismissed in its entirety.

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<sup>43</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 due under the terms of this Order.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. May 29, 2026

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A handwritten signature in cursive script that reads "Renée D. McKinney".

Renée D. McKinney  
Administrative Law Judge

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**Appendix: Corrections to Transcript Errors****Starbucks, Inc., Cases 19-CA-297589, 19-CA-297794, 19-CA-299666, and 19-CA-303477**

<u>Page: Line(s)</u>	<u>Correction</u>
123:19	“Mr. Hammond” corrected to “Ms. McBride”
123:21	“Mr. Hammond” corrected to “Ms. McBride”
124:8	“Mr. Hammond” corrected to “Ms. McBride”
125:2	“Mr. Hammond” corrected to “Ms. McBride”
152:14	“Mr. Hammond” corrected to “Ms. White”
153:21	“Mr. Hammond” corrected to “Ms. White”
257:18	“Dunbur” corrected to “Debuhr”
316: 4	“Judge McKinney” corrected to “Ms. Doud”
318:25	“Ms. White” corrected to “Ms. Doud”
319 1	“Ms. Doud” corrected to “Judge McKinney”
323:15	“Mr. Berger” corrected to “The Witness”
342:13	“Ms. McBride” corrected to “Mr. Hammond”

389:15	“Crmier” corrected to “Cormier”
469:6	“Ms. McBride” corrected to “Mr. Hammond”
469:12	“Ms. McBride” corrected to “Mr. Hammond”
525:4	“Dowd” corrected to “Doud”
541:22	“Quisenberry” corrected to “Quesenberry”
628:23	“Ms. Doud” corrected to “The Witness”
680:16	“Ms. Chase-Swartz” corrected to “Mr. Hammond”
850:7	“Mr. Hammond” corrected to “Mr. Berger”
854:12	“Mr. Berger” corrected to “Mr. Hammond”
868:22	“Right line” corrected to “Wright Line”
913:23	“881” corrected to “8(a)(1)” and “883” corrected to “8(a)(3)”
972: 22	“Ms. White” corrected to “Mr. Hammond”
976:19	This is a question, not an answer
976:22	“rules” corrected to “roles”

983:24	“SFC” corrected to “SCC”
1052:24	“Ms. Marty” corrected to “Ms. McBride”
1053:1	“Ms. Marty” corrected to “Ms. McBride”
1082:25	“Jeff Parker” corrected to “Geoff Parker”
1303:7	“Mr. Hammonds” corrected to “Ms. McBride”
1576:16	“Ms. Duo” corrected to “Ms. Doud”
1592:3	“pen” corrected to “pin”
1601:6	“Boytas” corrected to “Voytas”
1611:13	“Boytas” corrected to “Voytas”
1612:4	“Boytas” corrected to “Voytas”
1612:5	“Ms. White” corrected to “Ms. Doud”
1612:11	“Ms. White” corrected to “Ms. Doud”
1612:17	“Ms. White” corrected to “Ms. Doud”
1612:19	“Ms. White” corrected to “Ms. Doud”

1682:1	“roll” corrected to “role”
1682:2	“roll” corrected to “role”
1682:6	“assignment barista” corrected to “Siren barista”
1682:7	“assignment barista” corrected to “Siren barista”
1682:7	“rolls” corrected to “roles” and “elevated roll” corrected to “elevated role”
1690:6	“feel” corrected to “fill”
1697:15	“ACM” corrected to “ASM”
2062:2	This is an answer, not a question
2062:4	This is a question, not an answer