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**Starbucks Corporation and Workers United Labor Union International, affiliated with Service Employees International Union.** Cases 19–CA–295708, 19–CA–301315, 19–CA–303293, 19–CA–306943, 19–CA–308591, and 19–CA–309905

June 5, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On January 4, 2024, Administrative Law Judge Andrew S. Gollin issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel and the Charging Party each filed cross-exceptions and a supporting brief, and the Respondent filed answering briefs to the cross-exceptions.

The National Labor Relations Board<sup>1</sup> has considered the decision and record in light of the exceptions, cross-exceptions, and briefs<sup>2</sup> and has decided to affirm the judge's rulings, findings,<sup>3</sup> and conclusions and to adopt the judge's recommended Order as modified and set forth in full below.<sup>4</sup>

We affirm the judge's dismissal of the complaint allegation that the Respondent violated Section 8(a)(1) of the National Labor Relations Act when then-Assistant Store Manager Jude Mackintosh threatened to withhold previously announced wage increases and benefit improvements from Jantzen Beach store employees because they were in the process of unionizing. We agree with the judge that Mackintosh's statements are not attributable to the Respondent because the General Counsel failed to meet her burden of establishing on the record in this case that Mackintosh was a statutory supervisor under Section 2(11) and/or an agent acting with actual or apparent

authority under Section 2(13) at the time she made the statements.

We also affirm the judge's dismissals of the complaint allegations that the Respondent violated Section 8(a)(3) and (1) by discharging Jantzen Beach store employee Matthew Thornton, disciplining and then discharging 23rd & Burnside store employee Arthur Pratt, and disciplining 5th & Oak store employee Brian Mendez. In doing so, we find that even assuming the General Counsel met her initial burden under *Wright Line*<sup>5</sup> to prove that these employees' union and/or protected activity was a "motivating factor" in the Respondent's disciplinary decisions, the credited evidence establishes that the Respondent would have taken the same actions against Thornton, Pratt, and Mendez even in the absence of their union and/or other protected activity.

We also affirm the judge's dismissals of the complaint allegations that the Respondent violated Section 8(a)(1) by selectively and disparately enforcing its *Register Operation Customer Transactions* policy more strictly against employees who supported the Union at its Macadam Avenue store, and Section 8(a)(3) and (1) by issuing employee Alicia Flores a written warning as part of its selective and disparate enforcement of that policy because she supported the Union. We agree with the judge, for the reasons stated in his decision, that the General Counsel failed to establish that the Respondent more strictly enforced the policy after the Union's arrival.

Finally, we affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) on September 6, 2022, by more strictly enforcing its Dress Code policy at the Jantzen Beach store without providing the Union with prior notice and an opportunity to bargain over this change and its effects, and by issuing a documented coaching to employee Steven Sherman pursuant to its stricter enforcement of the Dress Code. We reject the Respondent's argument that, under *800 River Road Operating Company, LLC d/b/a Care One at New Milford*, 369 NLRB No. 109 (2020), enfd. mem. per curiam 848 Fed.Appx. 443 (D.C.

<sup>1</sup> The Respondent asserts that Member Prouty should recuse himself, claiming that his "past, present, and perceived relationships with the Service Employees International Union" creates a conflict of interest. Member Prouty has determined, in consultation with the NLRB Designated Agency Ethics Official, that there is no basis to recuse himself from the adjudication of this case.

<sup>2</sup> In its brief, the Respondent challenges the constitutionality of the statutory removal protections afforded to Board Members and Board administrative law judges. This argument, raised for the first time on exceptions and not raised before the judge, is deemed untimely and accordingly is waived. See *Yorkaire, Inc.*, 297 NLRB 401 (1989), enfd. 922 F.2d 832 (3d Cir. 1990).

<sup>3</sup> There are no exceptions to the judge's findings that the Respondent violated Sec. 8(a)(3) and (1) by issuing final written warnings to Jantzen Beach store employees Trey Hawthorne and Chloe Peterson.

The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>4</sup> We have modified the recommended Order to conform to the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

<sup>5</sup> 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Cir. 2021)(*Care One*), it had no obligation to bargain with the Union before imposing discretionary discipline for violations of the Dress Code. Under *Care One*, an employer is not required to bargain over discretionary discipline issued “*in accordance with an established disciplinary policy or practice.*” *Id.*, slip op. at 7 (emphasis added). Here, however, the judge correctly found that the Respondent’s established practice was to issue verbal coaching—not documented coachings or other written discipline—for violations of the Dress Code. Accordingly, as this case involves a change in the Respondent’s practice itself, not discretionary discipline issued pursuant to an existing policy or practice, *Care One* does not apply. Rather, this complaint allegation falls under the general unilateral-change doctrine announced in *NLRB v. Katz*, 369 U.S. 736 (1962) (holding that an employer violates Section 8(a)(5) and (1) if it fails to provide employees’ representative with prior notice and opportunity to bargain before making a unilateral change to any mandatory subject of bargaining). Here, the Respondent unilaterally changed a mandatory subject of bargaining by more strictly enforcing its Dress Code policy without providing the Union with prior notice and an opportunity to bargain. Therefore, the Respondent’s unilateral change, and the discipline it issued to Sherman pursuant to that unilateral change, violated Section 8(a)(5) and (1).<sup>6</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Starbucks Corporation, Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Disciplining employees because of their support for and activities on behalf of the Union.

(b) Disciplining employees pursuant to unlawful unilateral changes to their terms and conditions of employment.

(c) Changing the terms and conditions of employment of unit employees by more strictly enforcing its Dress Code policy without first notifying the Union and giving it an opportunity to bargain.

(d) In any like or related manner interfering, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days from the date of this Order, remove from its files any references to the unlawful disciplines issued to Trey Hawthorne, Chloe Peterson, and Steven Sherman, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful disciplines will not be used against them in any way.

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

All full-time and part-time baristas and shift supervisors employed by Respondent at its store located at 12235 N. Center Ave., Portland, Oregon; but excluding all store managers, office clericals, confidential employees, managerial employees, and all other employees, professional employees, and guards and supervisors as defined in the Act (the “Jantzen Beach Store Unit”).

(c) Rescind the unilateral changes consisting of more strict enforcement of its Dress Code policy.

(d) Within 14 days after service by the Region, post at its Jantzen Beach store copies of the attached notice marked “Appendix.”<sup>7</sup> Copies of the notice, on forms

<sup>6</sup> Member Mayer would dismiss this complaint allegation. The judge credited Sherman’s testimony that he consistently wore non-complaint clothing, in violation of the Dress Code, throughout the time he was employed by the Respondent. However, there is no evidence or finding that any supervisor or manager was aware of this non-compliance and it is undisputed that nothing was ever said to him about it. It is also undisputed that other employees at that store were verbally coached for Dress Code violations and sent home if they had no compliant clothing to change into. In early September 2022, Mackintosh told Sherman that his hat and gold chain necklace(s) did not comply with the Dress Code policy. The following day, Mackintosh again approached Sherman and again told him the hat and chain necklaces he was wearing were not in compliance with the Dress Code policy. On September 6, the Respondent issued Sherman a written coaching, which noted that the prior verbal coachings had not resulted in any change in Sherman’s non-compliance. The following day, Sherman arrived for work wearing pink sweatpants, a sweatshirt with a logo, and a hat. He also had a gold necklace on the outside of his sweatshirt. Manager Runyon commented that head-to-toe he was out of compliance with the Dress Code and Sherman responded

that with the staffing issues the store was facing recently he believed she had bigger fish to fry. One month later, Sherman quit.

The Respondent did not change its lawful Dress Code, which relevantly provides that “Partners who come to work inappropriately dressed or with unacceptable appearance may not be permitted to start their shifts. Failure to adhere to the dress code may result in corrective action, including separation from employment.” By its terms, the Dress Code provides for varying levels of discipline for violations, including separation, at the Respondent’s discretion. It is undisputed that other employees at that store received verbal coachings for Dress Code violations and there is no evidence that any of those employees flagrantly and deliberately continued to violate the Dress Code after receiving a verbal coaching, as Sherman plainly did. Under all of the foregoing circumstances, Member Mayer finds that the General Counsel has not established that the Respondent changed how it enforced its Dress Code.

<sup>7</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, copies of the notice to all current employees and former employees employed by the Respondent at any time since June 28, 2022.

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

Dated, Washington, D.C. June 5, 2026

\_\_\_\_\_  
James R. Murphy, Chairman

\_\_\_\_\_  
David M. Prouty, Member

\_\_\_\_\_  
Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO  
Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discipline employees because of your support for and activities on behalf of Workers United Labor Union International, a ffiliated with Service Employees International Union (Union).

WE WILL NOT discipline employees pursuant to unlawful unilateral changes to their terms and conditions of employment.

WE WILL NOT change the terms and conditions of employment of unit employees by more strictly enforcing our Dress Code policy without first notifying the Union and giving it an opportunity to bargain.

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

WE WILL, 14 days from the date of this Order, remove from our files any references to the unlawful disciplines issued to Trey Hawthorne, Chloe Peterson, and Steven Sherman, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful disciplines will not be used against them in any way.

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

All full-time and part-time baristas and shift supervisors employed by Respondent at its store located at 12235 N. Center Ave., Portland, Oregon; but excluding all store managers, office clericals, confidential employees, managerial employees, and all other employees, professional employees, and guards and supervisors as defined in the Act (the "Jantzen Beach Store Unit").

WE WILL rescind the unilateral changes consisting of more strict enforcement of our Dress Code policy.

STARBUCKS CORPORATION

The Board's decision can be found at <https://www.nlr.gov/case/19-CA-295708> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940



*Helena A. Fiorianti and Emily C. Vida, Esqs.*, for the General Counsel.

*Eric Hult, Elizabeth Carter and Yijee Jeong, Esqs.*, for the Respondent.

*Alyssa Garcia, Esq.*, for the Union.

### DECISION

#### STATEMENT OF THE CASES<sup>1</sup>

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This hearing was held on May 16–19, 2023, in Portland, Oregon, over allegations Starbucks Corporation (Respondent or Starbucks) violated Sections 8(a)(1), (3), and (5) of the National Labor Relations Act (Act) in response to organizing efforts at 12235 North Center Avenue (the Jantzen Beach store), 2328 West Burnside Street, Suite # 2 (the 23rd & Burnside store), 555 South West Oak Street (the Oak Street store), and 6080 South Macadam Avenue (the “Macadam Avenue store”) (collectively the “Portland stores”).

In 2022, Workers United Labor Union International, affiliated with Service Employees International Union (Union) petitioned and was elected to represent individual units at each of the Portland stores. Between May 2022 and March 2023, the Union filed the underlying charges. On April 5, 2023, the General Counsel issued the Further Consolidated Amended Complaint (complaint) alleging Respondent: (1) violated Section 8(a)(1) when it

threatened to withhold previously announced wage increases and benefit improvements because employees were in the process of joining the Union, and later when it began selectively and disparately enforcing its Register Operation and Customer Transactions policy against employees at its Macadam Avenue store who supported the Union; (2) violated Section 8(a)(3) and (1) when it disciplined employees Chloe Peterson, Trey Hawthorne, Arthur Pratt, Alicia Flores, and Brian Mendez, and when it discharged Pratt and employee Matthew Thornton, because they each engaged in protected activities; and (3) violated Section 8(a)(5) and (1) when it unilaterally began to more strictly enforce its Dress Code policy at its Jantzen Beach store without providing the Union with prior notice and an opportunity to bargain over this change and its effects, and by issuing a documented coaching to employee Steven Sherman for violating this policy. On May 15, 2023, Respondent filed its Amended Answer denying these allegations and raising various affirmative defenses.<sup>2</sup>

At the hearing, all parties were afforded the right to call and examine witnesses, present any relevant evidence, and argue their respective legal positions. The General Counsel, the Union, and the Respondent filed posthearing briefs, which I have carefully considered.<sup>3</sup> Based on the entire record, including my observation of the demeanor of the witnesses. I make the following Findings of Fact and Conclusions of Law.

#### FINDINGS OF FACT<sup>4</sup>

##### I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent, a corporation headquartered in Seattle, Washington, has been engaged in selling food and beverages at its retail stores throughout the United States, including at the Portland stores. In conducting its operations, Respondent annually derived gross revenues in excess of \$500,000 and has sold and shipped from the State of Oregon goods valued in excess of \$50,000 directly to points outside the State of Oregon. Respondent admits, and I find, that it is an employer engaged in

<sup>1</sup> Abbreviations used in this decision are as follows: “Tr.” for the Transcript, “Jt. Exh.” for Joint Exhibits, “GC Exh.” for the General Counsel’s Exhibits and “R. Exh.” for Respondent’s Exhibits. Although I have included citations to the record to highlight specific testimony or exhibits, my findings and conclusions are not limited to those portions but rather are based on my review and consideration of the entire record.

<sup>2</sup> Prior to the hearing, Respondent filed a Motion to Dismiss or, in the alternative, for a Bill of Particulars (“Respondent’s Motion”), and the General Counsel filed a Motion to Strike Respondent’s Affirmative Defenses and for a Bill of Particulars (“General Counsel’s Motion). On May 3, 2023, Associate Chief Administrative Law Judge Gerald M. Etchingham denied Respondent’s Motion. Respondent refiled its Motion, and it was referred to the Board. During a pre-hearing conference call, I informed the parties I intended to deny the General Counsel’s Motion. I made that ruling upon opening the record. (Tr. 8.) On May 30, 2023, the Board denied Respondent’s Motion.

Prior to the hearing, the Charging Party petitioned to revoke Respondent’s subpoenas to its custodian of records and to certain of the alleged discriminates. I issued orders ruling on those petitions. Pursuant to the Board’s Rules and Regulations § 102.31(b), those orders only become part of the record when requested by the party aggrieved, which was Respondent. Respondent was informed of the Rule and that it would need to offer them as exhibits if it wanted them part of the record. (Tr. 7–8). Respondent did not offer them.

<sup>3</sup> On June 20, 2023, the General Counsel filed an Unopposed Motion to Correct Trial Record Exhibits. I grant that Motion, and the exhibits are corrected as set forth therein.

<sup>4</sup> The Findings of Fact are a compilation of the stipulated facts, credible testimony, and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I primarily relied upon witness demeanor. I also considered the context of the testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness’s testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), rev’d on other grounds 340 U.S. 474 (1951)). Specific credibility findings, where necessary, are set forth below.

commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1)(Jt. Exh. 1).

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. Background

#### 1. Respondent's Operations

Respondent refers to its employees as “partners.” The partners at the Portland stores include baristas and shift supervisors (SSV). Baristas prepare food and beverage orders, handle sales transactions, restock inventory, and clean the store. SSVs perform these same tasks plus additional duties. There may be multiple SSVs working at the same time, but one will be designated the SSV on duty. The SSV on duty acts as the “key holder” and “cash controller.” The key holder duties include opening and closing the store and setting the alarm(s). The cash controller duties include counting the cash register tills, preparing bank deposits, and opening and closing the store safe. (Tr. 395–396) The parties stipulated that baristas and SSVs are employees within Section 2(3) of the Act. (Jt. Exh. 1.)

Baristas and SSVs are supervised and supported by the store manager (SM). Certain stores also have an assistant store manager (ASM). Occasionally other managers may work at a store to cover shifts or work on a temporary assignment. The SM reports to a district manager (DM), who oversees multiple stores. DMs are managed and supported by a regional manager (RM), who oversees multiple districts and DMs. The RMs report to an area manager (AM). The parties stipulated that SMs, DMs, and RMs are supervisors within Section 2(11) of the Act. (Jt. Exh. 1). There is no stipulation over the ASMs.

Brook Long was the SM at the Jantzen Beach Store from March 22, 2020, through June 2, 2022. Jude Mackintosh was the SM at the Jantzen Beach store from June 3, 2022, through December 11, 2022. Prior to becoming the SM, Mackintosh was the ASM at the Jantzen Beach store. Zach Kieft was the SM at the 23rd & Burnside store from December 6, 2021, through October 16, 2022. Richard Flor took over and has remained the SM at the 23rd & Burnside store since October 17, 2022. Lynae Carline has been the SM for the 5th & Oak Store since July 11, 2022. Amber Clenaghan has been the SM for the Macadam Avenue store since January 18, 2018. (Jt. Exh. 1.)

Shelby Runyon was the DM for the district that includes the Jantzen Beach store from February 22, 2021, through December 11, 2022, and beginning on January 1, 2024, she became DM for the district that includes the 5th & Oak store. Joshua Presler was the DM for the district that includes the Macadam Avenue store from August 5, 2019, through February 19, 2023. Sarah McPherson was the DM for the district that includes the 5th & Oak store and 23rd & Burnside store from November 22, 2021, through October 3, 2022. Candice Ott was the DM for the

district that includes the 5th & Oak store (but not the 23rd & Burnside store) from October 3, 2022, through December 31, 2023.

#### 2. Petitions, Mail-Ballot Elections, and Certifications

The Union engaged in organizing efforts at each of the Portland stores in 2022.<sup>5</sup> On March 4, the Union filed a petition in Case 19–RC–291715 seeking to represent the baristas and SSVs at the 23<sup>rd</sup> & Burnside store. The Union won that mail-ballot election on May 17, and the Certification of Representative issued on May 25. Also on March 4, the Union filed a petition in Case 19–RC–291713 seeking to represent the baristas and SSVs at the 5th & Oak store. The Union won that mail-ballot election on May 17, and the Certification of Representative issued on May 25. On March 30, the Union filed a petition in Case 19–RC–293238 seeking to represent the baristas and SSVs at the Jantzen Beach store.<sup>6</sup> The Union won that mail-ballot election on June 7, and the Certification of Representative issued on June 15. On June 6, the Union filed a petition in Case 19–RC–297141 seeking to represent the baristas and SSVs at the Macadam Avenue store. The Union won that mail-ballot election on August 10, and Certification of Representative issued on August 18. (Jt. Exh. 1.)

#### 3. Relevant Policies and Procedures

##### a. Partner Guide

Respondent's employee handbook is called the “Partner Guide.” It is given to baristas and SSVs when they are hired. (Jt. Exh. 20.) Updates are available on the company's intranet site (Partner Hub), or they can be obtained through Respondent's Human Resources referred to as “Partner Resources” or the “Partner Resources Service Center.” (Jt. Exh. 1.) The Partner Guide contains various policies, including, but not limited to, the following:

##### *Attendance and Punctuality*

A partner's reliability in reporting to work when scheduled and on time is essential to a store's efficient operations and in providing customers with the Starbucks Experience.

If a partner cannot report to work as scheduled or will be late to work, the partner must call and speak directly with the store manager or assistant store manager with as much advance notice as possible prior to the beginning of the shift. If a manager is not in the store, the partner should notify the partner leading the shift. Leaving a message or note without first making reasonable attempts to directly contact a manager or the partner leading the shift is not acceptable. Sending an e-mail or a text message is not an acceptable form of providing notice.

...

Failure to abide by this policy may result in corrective action,

<sup>5</sup> All dates refer to 2022, unless otherwise stated.

<sup>6</sup> In Case 19–RC–293238, the petitioned-for unit included ASMs. On April 12, 2022, Respondent filed a Statement of Position arguing ASMs should be excluded because they “exercise one or more indicia of supervisory status under the Act.” (Jt. Exh. 21(b).) On April 15, the Union, in its Statement of Position, took the opposite position, arguing ASMs

do not exercise any of the indicia of supervisory status. (Jt. Exh. 21(c).) Neither party presented evidence or further argument to support their positions. The parties eventually entered into a Stipulated Election Agreement. It neither included nor excluded ASMs. (Jt. Exh. 21(d)). The result was the only ASM, Jude Mackintosh, could vote subject to challenge.

up to and including separation from employment. Some examples of failure to follow this policy include irregular attendance, one or more instances of failing to provide advance notice of an absence or late arrival, or one or more instances of tardiness.<sup>7</sup>

(Jt. Exh. 2-A, pg. 27.)

#### *Dress Code and Personal Appearance*

Partners are the face of our brand, connection with our customers every day. All partners are expected to follow these standards during the workday... Partners who come to work inappropriately dressed or with unacceptable appearance may not be permitted to start their shifts. Failure to adhere to the dress code may result in corrective action, including separation from employment.

#### General Appearance, Colors and Materials<sup>8</sup>

...

Clothing colors must fall within a general color palette that includes white (for tops only), black, gray, navy blue, brown, or khaki (tan). Other colors are allowed as a small accent on shoes or for accessories (ties, scarves, socks, etc.)

...

#### Shirts, Sweaters and Jackets

Shirts must be clean, wrinkle-free, and in a style appropriate for food service that allows freedom of movement but does not present a safety hazard. Shirts must cover the mid-section when arms are raised. Sleeves must cover the armpits. Sweatshirts and hooded shirts are not acceptable.

Shirts may have a small manufacturer's logo, but must not have other logos, writings or graphics. The base shirt color must be within the color palette (black, gray, navy blue, brown, khaki or white). These same colors may be the base color for a subdued, muted pattern. Starbucks-issued promotional shirts may be worn for events or when still relevant for product marketing.

Solid-color sweaters or jackets within the color palette may be worn. Other than a small manufacturer's logo, outerwear must not have logos or writings. Starbuckscoffeegear.com offers reasonably priced, dress-code approved shirts for sale. Partners can also check the site for information on retail clothing discounts through vendor partnerships.

...

#### Hats and Headwear

...

Hats are optional unless required by state or local laws. Where required, Starbucks will provide a Starbucks logo hat, or the partner can wear a personal hat in one of the styles below that meets regulations ... Optional personal hat styles include a Starbucks-logo hat or visor, a plain baseball cap, beanie, short-brimmed hat or other secured head covering ... Colors must be within the color palette (excluding white). A hat must be worn with the bill forward, and must be clean and free of snags,

feathers, or other loose items. Hats issued to partners for a Starbucks promotion may be worn during the promotion.

...

#### Fingernails

Nails should be clean, well-manicured and of short or moderate length. Nail polish or artificial nail coverings of any type are not permitted in the interest of food safety.

#### Jewelry and Body Piercings

No jewelry is allowed on the hands or forearms, including watches, bracelets or wrist bands, except for one ring in the form of a plain band without stones or etchings. Other jewelry must not be distracting. One small facial piercing no larger than a dime is allowed. Earrings or ear gauges must be no larger than a quarter. Necklaces, including medical alert necklaces, are allowed and must be worn under clothing. No other visible pierced jewelry or body adornments are allowed, including tongue studs and subdermal implants.

Allowable jewelry must be simple in design and not be a health or safety hazard.

(Jt. Exh. 2-B, pgs. 28–30.)

#### *Recording Time Worked*

In accordance with federal and state wage and hour laws, Starbucks requires the accurate recording of, and compensation for, all hours worked by nonexempt partners. It is against Starbucks policy for any nonexempt partner to work "off the clock," or without having punched in or otherwise recording the time as time worked. It is also against Starbucks policy for a shift supervisor, shift manager, assistant store manager, store manager or district manager to instruct or permit any partner to work any amount of time for which the partner is not compensated.

...

A partner must punch out immediately upon completing the shift.

A partner must not work any pre-shift or post-shift time unless the partner is punched in.

...

#### *Off-the-Clock Work is Strictly Prohibited*

....

Any supervisor or manager who violates the time recording policy by instructing or permitting an hourly partner to work off the clock will be subject to corrective action, up to and including separation from employment. Any partner who works off the clock voluntarily or at the direction of a supervisor or manager, or any partner who performs work but does not record the time, will be subject to corrective action, up to and including separation from employment.

(Jt. Exh. 2-E, pgs. 16–17.)

<sup>7</sup> When examining attendance, the Partner Guide states that if a partner is tardy, absent, or having partners cover 25 percent of their shifts in a 6-week time frame, management is to meet with the employees and, if appropriate, issue coaching or discipline. (Tr. 383–385.)

<sup>8</sup> Respondent also has a "Lookbook" with examples to help partners adhere to the Dress Code policy. ((Jt. Exhs. 5(a)-(b).))

### *Perks for Partners*

#### Free Food Item and Beverages While Working

A store partner may consume -- free of charge -- one food item and any coffee, tea or blended beverages while on break during the partner's scheduled shift or during the 30 minutes prior to or after the partner's scheduled shift...

The store partner food and beverage benefit is available at the store in which the partner is working for the partner's personal consumption only; partners may not give away their partner food items or beverages to any other individuals.... The partner beverage may not be consumed while the partner is actually working, but only while on a rest or meal break. Additionally, partners are required to wait in line with other customers to receive their partner food items or beverages, and another partner should ring out each partner's item(s).

....

#### Weekly Partner Markout

"Markout" is the term used for one coffee or tea item that partners may receive at no cost each week at any U.S. company-operated Starbucks coffee store (excluding both stores located in the Seattle support center). The intent of this benefit is to provide partners with the opportunity to explore the many coffees and teas offered, as well as introduce these products to friends and family ...

(Jt. Exh. 2-F, pgs. 69–70.)

### *Register Operation and Customer Transactions*

All partners are required to conduct themselves with the utmost honesty and integrity... Each partner will be held responsible for each transaction conducted at the assigned cash register till, including all transactions that take place. Depending on one's position, a partner may additionally be responsible for accessing and securing the store safe and preparing bank deposits.

...

Do not give away free beverages, product or merchandise to relatives, friends or partners.

...

Do not misuse the "Partner Beverage" or partner food item transactions. These are meant solely for a partner to process a beverage for another eligible partner who works in the store only. Partners cannot use it for their own drinks, for a customer or for any other reason.

(Jt. Exh. 2-G, pg. 33.)

### *Corrective Action*

Corrective action communicates to the partner that performance problems exist or that the partner is engaging in unacceptable behavior. The intent of corrective action is to give the partner a reasonable opportunity to reestablish an acceptable level of performance or behavior.

Corrective action may take the form of a verbal warning, a written warning, demotion, suspension or separation from employment. The form of corrective action taken will depend on the seriousness of the situation in the surrounding circumstances. The evaluation of the seriousness of the infraction and the form of the corrective action taken will be within the sole discretion of Starbucks. There is no guarantee that a partner will receive a minimum number of warnings prior to separation from employment or that corrective action will occur in any set manner or order.

(Jt. Exh. 2-C, pg. 47–48.)

#### *b. Store Operations Manual and Safety Security Manual*

Respondent also has its "Store Operations Manual" and "Safety Security Manual." They have policies and procedures for opening and closing of the stores and handling money and accessing the safe. (Jt. Exh. 4.) The Store Operations Manual's "Opening and Closing Safety Procedures" states that when an SSV acts as a "key holder" and closes the stores, they must "[e]nsure all entrances, exits and backdoors are locked and secure." (Jt. 4, pg. 17.) This includes drive-thru windows.

The Safety and Security Manual's "Safe Security" policy states: "The safe should be kept closed and locked at all times. The safe must not be left open and unattended by the cash controller. No other partner may be asked to watch or guard an open safe. Locking the inner door of the safe, but leaving the outer door open, is considered leaving the safe open." (Jt. Exh. 3(d), p. 112. The "Starbucks Cash Handling Steps to Excellence" policy states that "[w]hen the store is closed, [c]ash [c]ontrollers ensure the store is locked and secured (i.e., no one enters or leaves the store) while [c]ash [c]ontroller activities are performed." (Jt. Exh. 24, pg. 11.)

#### *B. Matthew Thornton*

##### 1. Background

Thornton began working for Respondent in May 2010. He moved to the Jantzen Beach store in December 2020, where he worked as an SSV. While there, he reported to SM Brook Long. Jude Mackintosh was the ASM.

Thornton often worked evenings as the closing SSV on duty. The Jantzen Beach store has two single-opening glass doors into the café lobby, one on the right side and one on the left side. There also is a drive thru with a sliding glass window. Both the doors and window have manual locks.

##### 2. 2021 Discipline for Leaving Door Unlocked

On the evening of September 7, 2021, Thornton was the closing SSV on duty. The following day, the opening shift arrived to find the right exterior door was unlocked. The incident was reported to SM Long. On September 9, Long met with Thornton and issued him a final written warning for violating the Opening and Closing Safety Procedures by leaving the door unlocked and the store unsecured. (GC Exh. 6). Thornton denied responsibility. He explained that he had a routine of checking the doors at the end of his shift, and it was unlikely he would have left one unlocked. Thornton asked Long to investigate further before he would agree to sign the warning. Long told him he should sign it, and if they found evidence proving he was not responsible,

they would rip it up. Thornton agreed and signed the warning. (Tr. 48–50.)

About a week or so later, the technician who services the store's alarm system came in to perform repairs. (Tr. 51–53.) Thornton asked the technician if he could check whether anyone had accessed the alarm system on September 7, after closing. The technician provided Thornton with a printout showing all the system activity for the evening. (GC Exh. 7.) It showed that after Thornton activated the alarm upon leaving at 7:58 p.m., someone else accessed the alarm system from inside the store at 10:26 p.m., using a vendor code. Respondent has vendors that come after hours to deliver supplies or provide services. They have keys and the alarm code to the store. The printout shows when the alarm system was accessed and what code was used, but it does not show what door(s) the vendor used to enter or exit.

On September 21, Thornton texted Long the printout. He stated it proved he was innocent. He also stated that next time he hoped a more thorough investigation would be done before a write-up was issued. Long, who was on vacation at the time, responded by text. She confirmed again she would rip up the final written warning if it was proven for sure he was not responsible, and that they would discuss it further when she returned from vacation. (GC Exh. 7.)<sup>9</sup>

Long later contacted the Logistic Services Representatives (LSR) team, which serves as a liaison between Starbucks' retail stores and the vendors who make deliveries or provide services.<sup>10</sup> (Tr. 421.) She inquired whether on the evening of September 7 a delivery driver may have left the door unlocked, had issues with the lock(s), or experienced anything else out of the ordinary. She was informed there were no issues and nothing out of the ordinary happened. Based upon that, Long concluded that, as the SSV on duty, Thornton was responsible for failing to ensure the doors were securely locked before leaving for the night. (Tr. 455–456.) Long, however, did not communicate her conclusion to Thornton at the time, and Thornton assumed the warning had been ripped up.

#### 4. Final Written Warning for Attendance

On March 25, 2022, Long and ASM Mackintosh met with Thornton and issued him a final written warning for violating Respondent's Attendance and Punctuality policy. (GC Exh. 5.)

<sup>9</sup> Thornton testified that a couple of weeks after the September 7 incident he noticed one of the delivery drivers entering the store through the right-hand door. Drivers typically entered through the left-hand door. Thornton asked the driver about it, and the driver stated his key did not work in that door. Thornton testified he later texted this information to Long. (Tr. 51–52.) Those texts were not introduced into evidence, and there is no corroboration that he communicated with Long about this. In general, I did not find Thornton to be a reliable witness. He struck me as having a less than forthright demeanor, and his responses were, at times, vague, self-serving, and inconsistent. For example, on cross examination, he testified about his communications with Long:

Q: So beyond those text messages, do you recall providing Brook Long with any additional evidence beyond what's contained in those text messages?

A: I gave her a number to call the delivery people. I'm not sure what evidence she found from there, but all I had was from what I saw and from what I heard.

Thornton accrued a "significant" number of unplanned absences, missing 13 out of 30 of his shifts in the prior 6 weeks, and 21 out of 59 of his shifts during the first quarter of the year. Several of those days were because Thornton's partner had a terminally ill family member, and they made multiple trips to Spokane, Washington to visit and later attend the funeral. Thornton testified Long knew the reasons for these absences, and he believed he was permitted to take the leave. (Tr. 45–46.)

During the March 25 disciplinary meeting, Thornton stated he would only sign the warning if it was reduced to a written warning. Long told him DM Shelby Runyon stated it had to be a final warning because Thornton already received a final warning for leaving the exterior door unlocked in September 2021. Thornton reminded Long she would rip that up if he proved he was not responsible, and the printout he sent her showed that. Long stated Runyon said not to rip it up. (Tr. 46.)

#### 5. Union Organizing

Thornton first learned about the union organizing effort from co-worker Isabelle Loverich about a week before the March 30 petition was filed. He testified he participated in conversations with other employees about the Union, including while at the store. (Tr. 37.) Thornton, however, did not speak with fellow SSVs David Finley and Odyssey Palmeira-Beamer because he knew they did not support the Union. The record does not reflect whether members of management were present for or aware of Thornton's participation in these conversations.

Beginning in early April 2022, Thornton wore Union T-shirts and pins while at work. (GC Exh. 2.) Fellow employee Trey Hawthorne testified Long and Runyon were present on certain days when Thornton wore the T-shirts and pins. (Tr. 160–161.) Thornton also testified he posted Union fliers in the back of the store. (GC Exhs 3 and 4.) The record does not reflect whether members of management were present or aware that he posted the fliers. According to Thornton, the fliers were regularly removed, and he believed it was done by SSV Finley. (Tr. 42–43.)<sup>11</sup>

#### 6. Follow-Up Communication with Runyon and Additional Infractions

Following the March 25 disciplinary meeting, Thornton contacted Runyon and asked her to look into his September 2021

Q: And the number you provided her, was that also in text messages or in person?

A: No. Just—I didn't give her the specific number, just, like, you know, for her to call the delivery people to follow up on what I had said. (Tr. 86.)

<sup>10</sup> I generally found Long to be a credible witness. She had a candid, straightforward demeanor and a clear and detailed recollection of events. Long quit working for Respondent in June 2022, and she exhibited no bias toward it when responding to questions on direct or cross examination. In fact, she appeared disinterested, almost annoyed, at being called by Respondent to testify as a witness.

<sup>11</sup> The General Counsel argues SSVs Finley's and Palmeira-Beamer's knowledge of partners' protected activity should be imputed to management because they did not support the Union, and because, at some unspecified date following the events at issue, Finley was promoted to SM. There is no evidence either reported their observations to management and there has been no viable argument for imputing their knowledge to Respondent.

final warning. Runyon agreed but stated it was unlikely she would find anything because it was more than seven months ago. (Tr. 418–420.) On April 3, Thornton texted Runyon the alarm system printout from September 7 that he had sent to Long. (R. Exh. 6.)

Runyon contacted Partner Resources Service Center (“PRSC”) to open an appeal for Thornton over his prior final warning. She also contacted Asset Protection to determine if surveillance video was still available from September 7, and she learned it was not. She then contacted LSR to determine if there were any processes in place for vendors to document if they had any issues accessing a store or how they report if a door is found unlocked. She received no additional information. (Tr. 421–422.)<sup>12</sup>

A week or so later, in mid-April, Runyon was at the Jantzen Beach store. Thornton asked if she was able to look into the September 7 incident. Runyon told him the company only keeps surveillance video for 6 weeks. She also stated that since there was no evidence showing he was not responsible, they were going to keep the discipline as is. (Tr. 61–62)

#### 7. Discharge

On the evening of April 8, Thornton was the closing SSV on duty. (Tr. 93.) The following morning, the opening shift found the drive-thru window had been left unlocked overnight. It was documented in the Daily Record Book (DRB), a spiral notebook that SSVs and SMs use to handwrite messages to one another. (Jt. Exh. 17(a)-(b).) The following day, Long was off work. SSV Finley texted her photos of the notation in the DRB and of the unlocked window. (R. Exh. 10.) Long recalled receiving the photos from Finley on April 9, because it was her birthday. (Tr. 456–457; 459.)

Thornton was the closing SSV on duty on April 14. On April 15, the opening shift arrived and found one of the exterior doors to the store was left unlocked.

Long later reported these incidents to Runyon. (Tr. 422–423.) From her prior conversation with Thornton, Runyon was aware of his claims that vendors may be leaving the exterior doors unlocked. On April 16, she emailed Mari Tazelaar, a Regional Partner & Asset Protection Manager, and told her the Jantzen Beach store’s left-hand door had been left unlocked on the evening of April 14. She asked Tazelaar to review the surveillance video from that evening to see if she could “discern if this is a delivery issue or a partner misstep.” (R. Exh. 7.) Tazelaar reviewed the video and provided screenshots to Runyon. Runyon concluded that the only vendor who entered the store that evening did so through the door opposite to the one found unlocked. (R. Exh. 7) (Tr. 422–427).

<sup>12</sup> In general, I have credited Runyon’s testimony about the steps she took regarding Thornton. Her responses were detailed, consistent, and largely corroborated by documentary evidence.

<sup>13</sup> Long was not questioned about this conversation. The General Counsel argues this “change” regarding SM authority was unprecedented. Thornton, however, testified that in the spring or summer of 2021, Long issued him a written warning for not properly handling his cash controller duties. At that time, Long stated upper management was “telling” her to issue discipline to employees for those violations, and she was writing up everybody for it. (Tr. 80–81.)

At some point after April 15, Thornton learned he might be getting disciplined again for violating the Opening and Closing Safety Procedures. He asked Long what he should do. Long responded that it was out of her hands, and he would need to talk to Runyon. She also commented that ever since the employees petitioned for a union, upper management has come in and told her she is no longer allowed to discipline employees on her own. Long mentioned another SSV (Palmeira-Beamer) who she wanted to discipline but was unable to do so on her own. (Tr. 66–67; 69–70.)<sup>13</sup>

On April 29, Runyon and Long met with Thornton and handed him a Notice of Separation form for repeatedly violating the Opening and Closing Safety Procedures. (Jt. Exh. 6.) It stated that on “April 10” the opening shift arrived at the store to discover the drive-thru window had been left unlocked overnight, and that on April 15 the opening shift arrived to discover the left-hand exterior door was left unlocked overnight.<sup>14</sup> On both dates, Thornton was the closing SSV on duty and ultimately responsible for ensuring all access points were securely locked before leaving the store. The Notice referenced Thornton’s September 2021 final written warning for the same conduct.

During the discharge meeting, Thornton did not deny responsibility for leaving the window or door unlocked. He instead pleaded for some other form of discipline that would allow him to keep his job. (Tr. 430.) As alternatives, he proposed being transferred to another store with a drive-thru window that locked automatically, or (again) being demoted from an SSV to a barista where he would not be responsible for the Opening and Closing Safety Procedures. (Tr. 64.)<sup>15</sup> Runyon rejected both and moved forward with Thornton’s discharge. She informed him of the process of contacting PRSC if he wanted to appeal his discharge. (Tr. 430.). Thornton did not contact PRSC.

#### C. Macintosh Statement

##### 1. Background

Isabelle Loverich worked for Respondent as a barista/SSV at the Jantzen Beach store from June 2021 to August 2022, when she quit. For most of Loverich’s employment, Brook Long was the SM and Jude Mackintosh was the ASM.

In April 2022, Loverich was regularly working about 38 hours per week at the store, and she wanted to reduce her hours in order to work a second job. At the time, ASM Mackintosh had a role in preparing the work schedules.<sup>16</sup> Loverich spoke to her and asked if she could drop to about 20 hours a week. Mackintosh responded that was not going to work for management, and that they did not have room in the schedule for her at 20 hours a week. (Tr. 112–113.) An agreement was eventually reached between management and Loverich where she would be scheduled for 30

<sup>14</sup> The April 10 date was a typo, and should be April 9, as reflected in the DRB and Long’s testimony. (Tr. 461.)

<sup>15</sup> Thornton previously worked for Respondent as an SSV in California. He was demoted and transferred, in lieu of discharge, after customers complained of poor customer service when he was at the store. (Tr. 71–72.)

<sup>16</sup> The specific details about Mackintosh’s role and authority in preparing the schedule, as well as the level of oversight or review, if any, she received were not addressed in the record.

hours per week. Following the agreement, Loverich went on vacation. When she returned, she saw she was only scheduled for 20 hours for the week of May 9. Loverich texted Mackintosh to find out why. Mackintosh told Loverich she wanted to speak with her about it in person. (Tr. 99–100.)

## 2. Statements About Benefits

On May 8, Loverich and Mackintosh met for a one-on-one conversation in the back room of the Jantzen Beach store. Loverich asked why she was only scheduled for 20 hours when the agreement was she would be scheduled for no less than 30 per week. Mackintosh responded there were not enough allotted hours to give her more than the 20 hours.

Mackintosh then changed subjects. She told Loverich she was informing the other partners about the benefits Respondent was rolling out in August, and that the Jantzen Beach store employees would not be eligible for those benefits. She explained that partners at other stores would be receiving credit card tips, improved healthcare, and a pay raise. (Tr. 101.) Loverich recalled that Mackintosh appeared to be reading from a document when they spoke. (Tr. 114–115.) About five days prior, Respondent posted two documents on the Partner Hub entitled “Creating Our Future Together as Partners” and “Partners, You Have a Choice: Get the Facts.” (Jt. Exhs. 1, 15–16.) The first document highlighted specific improvements that Respondent planned to implement at its nonunion stores in the upcoming months, including higher pay, better benefits, and increased training opportunities. The second document provided a timeline for when Respondent previously provided new benefits to employees, and indicated that if employees unionized, future improvements were uncertain and would have to be bargained. Mackintosh told Loverich that, with bargaining, wages could go up or down, and she wanted the partners to be aware of that. (Tr. 101.)

### D. Chloe Peterson

#### 1. Background

Chloe Peterson began working for Respondent in around 2019. She transferred to the Jantzen Beach store in May 2021. In December 2021, she became a SSV. She initially reported to Brook Long, and later reported to Jude Mackintosh when she became the SM.

#### 2. Union Activity

Peterson supported the union organizing effort at the Jantzen Beach store. She showed her support by wearing a Union T-shirt and talking “positively” about the Union about once a week while at work. (Tr. 303–305.)<sup>17</sup>

The Union planned both a “sip-in” and a rally at the Jantzen Beach store for May 14, 2022. A “sip-in” is where Union supporters gather at one of Respondent’s stores, order drinks, and sit together in the store. Peterson was scheduled to work May 14. When she arrived that morning, the doors into the lobby were

locked. She knocked and was allowed in by fellow SSVs Finley and Palmeira-Beamer, who informed her the lobby would be closed that day because there was “a strike” planned. Peterson told them she thought it was unethical to lock the doors due to the strike. (Tr. 307–308.)

As result, the scheduled sip-in did not occur, but the rally did. It was held outside in the parking lot. There were speeches and chanting during the rally, and the entire event lasted about an hour. (Tr. 102–103.)

A few days later, on around May 18, the Union held “a strike” outside the Jantzen Beach store. Loverich, Peterson, and Hawthorne were among those who participated. Peterson held up a sign during the strike that stated, “Union busting is disgusting.” She recalled seeing two managers from other Portland stores inside the store, along with SSV Finley and the baristas who were working. The store closed early that day. (Tr. 309–310.)

The following day, on May 19, there was a letter posted on the refrigerator in the back room of the Jantzen Beach store. The letter was from RM Sadie Kingrey. It stated in pertinent part:

On Saturday, May 14th, Workers United with the assistance of the Democratic Socialists held a sip in at our Jantzen Beach store. Although the event was announced as peaceful, unfortunately it was not. Representatives who were leading the rally made maliciously false claims about [DM] Shelby Runyon. They claimed Shelby shouted harassing statements and expletives at them during their rally, and further told partners they could be terminated by Starbucks for doing even less. These representatives’ claims were picked up and reiterated in several social media postings which identified Shelby by name and exposed her to retribution.

The truth is, Shelby was nowhere near the rally on Saturday. She did not come and could not have made any of the comments the representatives claimed. Unfortunately, as a result of this incident and the Union’s fabrications, we were unable to serve our community and negatively impacted partners who wanted to work their scheduled shifts in the store. While we respect partners’ right to use their voices, and to engage in activity including protesting, during the protest some participants chose to engage in conduct that was truly hurtful to Shelby, and intimidating to customers and our partners.

....

Some of you have, or soon will receive a ballot from the National Labor Relations Board asking if you want to be represented by Workers United. Others will continue to encounter union organizers asking you to sign an authorization card. When that time comes, I hope you will reflect upon some of the behavior we are all witnessing. And before you decide, I hope that you take a moment and ask yourself whether the organization truly reflects you, your values and what you hope to

<sup>17</sup> Peterson testified that in around July or August 2022, she wore a Union T-shirt while she was cleaning the bathrooms at the store. Mackintosh, who had been promoted to SM, saw her and stated she needed to wear her apron. Peterson replied it was her understanding that partners should not wear their aprons while cleaning the bathrooms (because of the use of cleaning supplies and the wearing of aprons while handling

food or beverages). Mackintosh agreed, and that was the end of the conversation. (Tr. 317–318.) There is no complaint allegation that Respondent restricted or interfered with employees’ right to wear union insignia or apparel while at work, or discriminatorily enforced its Dress Code policy against employees for doing so.

accomplish at Starbucks.  
(GC Exh. 8).

### 3. Investigatory Meetings with Peterson

On the evenings of June 8 and 9, Peterson was the closing SSV on duty. (Jt. Exh. 19(a).) On the morning of June 9, Loverich was the opening SSV. She arrived to find the drive-thru window was unlocked. She reported this to SM Mackintosh. She also reported that the vendor who serviced the ovens overnight called to report one of the doors into the lobby was unlocked when he arrived, and he locked the door before he left. (Tr. 432.) Mackintosh later reported this to Runyon. Runyon contacted PRSC and told Mackintosh to speak with the closing SSV on duty (Peterson). (Tr. 433.)

On June 23, Runyon and Partner Relations Representative Jessica Durham held an investigatory meeting with Peterson.<sup>18</sup> Arthur Pratt, an SSV from the 23rd & Burnside store, attended the meeting as Peterson's union representative.<sup>19</sup>

Runyon informed Peterson they had reviewed the surveillance video from the evenings of June 8 and 9, and they were investigating her for leaving the exterior doors to the store unlocked, for leaving the drive-thru window unlocked, leaving the safe open, and allowing an employee (Hawthorne) to work off the clock.<sup>20</sup>

At the start of the meeting, Runyon and Durham asked Peterson a question, and Pratt interjected to ask a clarifying question. Durham told Pratt that he could not talk or ask questions during the meeting. Pratt insisted that he could and produced a printout from the Board's website with information about his and Peterson's rights. According to Pratt, Durham then allowed him to speak and ask questions. (Tr. 257–258.)

They discussed each of the alleged violations during the meeting. As for leaving the safe open, Peterson stated it was a new safe and she had not been trained on how to use it properly. She explained it had to be loaded a certain way for all the register tills to fit inside and for the door to close, but she did not know how. (Tr. 325–326.) On the night at issue, Peterson admitted that she closed the safe door but did not lock it. (Tr. 327–328.)

As for leaving the drive-thru window unlocked, Peterson stated she had never been "formally" trained on how to close the store.<sup>21</sup> She also told Runyon and Durham that SSV Odyssey Palmeira-Beamer had failed to properly lock the window, and she was not disciplined. Peterson was asked to provide proof that Palmeira-Beamer had done that. Peterson stated there were references about it in the DRB, but the DRBs were no longer kept in the store. (Tr. 313–314.)

As for allowing Hawthorne to work off the clock, Peterson stated she did not recall that occurring. She asked to see the surveillance video, and Runyon said no. (Tr. 315.)

<sup>18</sup> Durham was not called to testify. I credit the unrefuted testimony from Pratt.

<sup>19</sup> The investigatory meeting originally was scheduled for June 13, but it was rescheduled. (Tr. 252–253.)

<sup>20</sup> Loverich reported to then-SM Mackintosh that one of the doors to the store had been left unlocked on two consecutive nights after Peterson had been the closing SSV. Loverich initially was evasive and feigned a lack of memory when she testified about this, but she eventually acknowledged it to be true after being presented with her pre-hearing

### 4. Final Written Warning

Five days later, on June 28, Peterson was called into a meeting with Runyon and another unidentified manager. Runyon handed Peterson a final written warning and went through it with her. (Jt. Exh. 7) (Tr. 330). The warning stated that on June 8, Peterson was the closing SSV on duty, and it was discovered the following morning that the drive-thru window had been left unsecured overnight, in violation of the Opening and Closing Safety Procedures. It also stated that on June 9, Peterson was the closing SSV on duty, and it was discovered the following morning that the safe door was left unsecured, in violation of the Safe Security policy. Finally, it stated that on June 9, while Peterson was the closing SSV on duty, Hawthorne clocked out at 6:03 p.m. but continued to work until the closing time of 7:30 p.m., in violation of the Off-the-Clock Work policy. This was the first discipline Peterson had received. (Tr. 316–317.)

#### E. Trey Hawthorne

##### 1. BACKGROUND

Trey Hawthorne began working for Respondent on May 5, 2019. Throughout his employment, Hawthorne has worked as a barista at the Jantzen Beach store. When he began working there, he reported to Brook Long, and then he reported to Jude Mackintosh when she took over as SM.

##### 2. Union activity

During the organizing effort, Hawthorne participated in union rallies, strikes, and sip-ins. Hawthorne attended the May 14 rally outside the Jantzen Beach store. He held a sign that said "Union Yes! Union Proud." (GC Exh. 11.) He also spoke in front of those who attended, using a microphone. As he spoke, he expressed his displeasure with Thornton's discharge and Respondent's "anti-Union practices," including disproportionately writing up and disciplining partners who supported the Union. (Tr. 148–150.) The only "supervisors or managers" Hawthorne recalled being present that day were SSVs Finley and Palmeira-Beamer. (Tr. 150–151.)

##### 3. Investigatory meeting

On June 23, 2022, DM Runyon and Partner Relations Representative Jennifer Durham held an investigatory meeting with Hawthorne. (Tr. 131.) Quentin Kanta, a former employee, was present as Hawthorne's union representative. Durham introduced herself and stated she had some questions for Hawthorne. Kanta interjected and stated he and Hawthorne knew their rights during an investigatory meeting. Durham responded that her understanding was representatives were not allowed to ask or answer questions. Kanta replied that was not his understanding. (Tr. 131–132.)

affidavit. (Tr. 121–123.) On redirect, Loverich testified she also told Mackintosh about a conversation she had with a vendor who reported having issues using his key in the door(s). (Tr. 123.)

<sup>21</sup> Before Peterson moved to Portland to become an SSV, she "shadowed" a closer in which she observed how the cash pull was done and how certain closing tasks were done. She understood she was expected to make sure the doors and drive-thru windows needed to be closed and locked. (Tr. 322–323.)

Durham then asked Hawthorne if he was familiar with Respondent's social media policy (prohibiting disparaging or untrue remarks about the company or partners) and if he had a Twitter account. Hawthorne answered yes to both. Durham then showed him a printed copy of a tweet with a photo of union supporters engaged in a sip-in. Below it was a tweet, "I'm hearing that district manager Shelby called [S]tarbucks legal for advice because the barista she's trying to fire asserted her Weingarten rights. Folks, we love to see it." Below the tweet was a reply to this post from "Trey(SBWorkersUnited) Hawthorne" dated June 14, 2022, that read "Lol get fucked [S]helby." (GC Exh. 9.) Durham asked Hawthorne if he typed that reply, and Hawthorne stated he had. He said he was quoting someone who had attended one of the rallies. Durham asked who he was quoting, and Hawthorne said he did not want to say. (Tr. 135–136.)

Durham then changed topics and showed Hawthorne a copy of the Recording Time Worked policy from the Partner Guide. She asked if he was familiar with that policy. Hawthorne answered he was. Durham then asked Hawthorne if he remembered what shift he worked on June 9. Hawthorne stated he could not remember. She then showed him a picture of his schedule for that week (he was scheduled to work 1 p.m. to 6 p.m. on June 9) and his time punches for that day, indicating he punched in at 1 p.m. and punched out at 6:03 p.m. After showing Hawthorne these documents, Durham asked if he left the store immediately after clocking out. At that point, Kanta spoke up and stated it sounded like Hawthorne was being accused of something, and, if so, they both would appreciate knowing what. Kanta also told Durham that if she had evidence about what Hawthorne was accused of, they would appreciate seeing it. Durham responded she had video evidence of Hawthorne clocking out but not leaving the store, but she declined to show them it at that time. (Tr. 154–155.) She also again told Kanta that he was not allowed to ask or answer questions during the meeting. Durham then turned back to Hawthorne and inquired if he was asked to perform work duties off the clock. Kanta spoke privately to Hawthorne and advised him not to answer any more questions. After which, Hawthorne declined to answer any further questions, and the meeting ended. (Tr. 136–138.)

#### 4. Final Warning

On June 29, Runyon issued Hawthorne a final written warning for violating the Recording Time Worked policy. (Jt. Exh. 8.) It stated Hawthorne clocked out on June 9, at 6:03 p.m., and continued to work behind the bar until 7:30 p.m. Hawthorne declined to sign the warning because he did not believe it was correct. (Tr. 157–158.)

At the hearing, the parties introduced surveillance videos from June 9, between 7 p.m. and 7:30 p.m. (Jt. Exh. 18(c)-(d)).<sup>22</sup> There are two blocks of video, each lasting about 4–5 minutes. Runyon was shown the videos at hearing, and she confirmed the only individuals shown on the videos were Peterson, and baristas Steve Sherman and Carson (last name unknown). (Tr. 439–440.) Hawthorne does not appear at any point. Respondent presented no evidence showing Hawthorne worked during any portion of

the timeframe alleged in his final warning.

### F. Arthur Pratt

#### 1. Background

Arthur Pratt began working for Respondent in October 2016. He transferred to the 23rd & Burnside store in January 2021. He worked as an SSV, initially reporting to SM Zach Kieft and then to SM Richard Flor. The DM was Sarah McPherson and later Candace Ott.

#### 2. Prior Documented Coaching for Attendance

Prior to transferring to 23rd & Burnside, Pratt worked at Respondent's Kearney Plaza store. On November 19, 2021, the SM at that store issued Pratt a documented coaching for violating the Attendance and Punctuality policy. It stated Pratt was 54 minutes late on November 3, 6 minutes late on November 4, and 40 minutes late on November 18. (GC Exh. 12.) The coaching was the first discipline Pratt received for time and attendance. He testified that partners at that store regularly would arrive a few minutes late. Pratt's understanding of the practice there was that as long as you called the store to say you would be late, there were no consequences. (Tr. 265.)

After transferring to the 23rd & Burnside store, Pratt spoke with SM Kieft about the prior coaching. The conversation occurred in late January or early February 2022. Pratt did not deny being late on the days at issue, but claimed the coaching was in retaliation for filing an ethics complaint against the Kearney Plaza SM. Kieft told Pratt there was nothing in his file about the prior coaching. (Tr. 262–263.)<sup>23</sup>

#### 3. Union Activity

Pratt began supporting the organizing effort at the 23rd & Burnside store in February 2022. He spoke with fellow employees about organizing, distributed authorization cards, handed out union T-shirts and pins, and was observed by management wearing union T-shirts and pins. He also signed a "Dear Howard" letter, which is a letter prepared and signed by partners sent to Respondent's CEO raising concerns about their wages, hours and working conditions and demanding improvements. The letter Pratt signed was undated. (Jt. Exh. 23(b).) He also attended union rallies, sip-ins, strikes, and acted as a union representative for partners, such as Chloe Peterson, during investigatory meetings. (Tr. 248–250.)

#### 4. Warning, Final Warning and Discharge

On about May 25, Pratt went on an unpaid medical leave of absence following major surgery. (GC Exh. 14) (Tr. 267–268.) He was approved to be on leave until August 6, but he returned to work in early July, because he needed income. (Tr. 268–270.) Pratt's doctor placed him on restrictions prohibiting him from lifting, pushing or pulling over 15 pounds for 6 weeks. There were no other restrictions or accommodations listed. (GC Exh. 15.)

Pratt experienced chronic fatigue following his surgery, and it affected his attendance. On July 4, Pratt failed to arrive for the

<sup>22</sup> The record is corrected to reflect that Jt. Exh. 18(d) is about a 4-minute video starting at around 7:12 p.m., and Jt. Exh. 18(c) is about a 5-minute video starting at around 7:23 p.m.

<sup>23</sup> While I credit Pratt's testimony, the details about this conversation were limited. Respondent called Kieft as a witness after Pratt had testified, but he was not questioned about this conversation.

start of his shift. He called Kieft 15 minutes later to report he had overslept. Kieft was understanding but stated Pratt had to make sure it did not happen again. The following day, on July 5, Pratt called in a few minutes prior to the start of his shift and told Kieft he had overslept again and was heading into work. Pratt arrived about 14 minutes late for his shift. Kieft and Pratt spoke that day, and they discussed possible steps Pratt could take to prevent this from happening again. Pratt mentioned setting different alarms on his phone. On July 22, Pratt again failed to show up for the start of his shift. This time, however, he did not call in or notify anyone as to his whereabouts. Kieft attempted to contact Pratt but could not. Pratt eventually arrived for work 1 hour and 7 minutes late. He told Kieft he overslept again (Tr. 491-493).

On August 6, Kieft met with Pratt and issued him a written warning for violating the Attendance and Punctuality policy on the above dates.<sup>24</sup> (Jt. Exh. 9.) Pratt asked why he was receiving a warning rather than a documented coaching. Kieft noted Pratt's prior documented coaching for attendance, which Kieft indicated was always in Pratt's file. (Tr. 262-264.)<sup>25</sup>

Following the warning, Pratt's attendance issues did not improve. On September 10, 2022, he arrived 15 minutes late for the start of his scheduled shift without contacting anyone. A week later, on September 17, Pratt was scheduled to be the opening SSV on duty. He did not arrive for work at his scheduled time. The opening barista who was waiting for him to be able to enter the store attempted to contact Pratt and received no response. A manager proxy then attempted to contact Pratt and eventually got ahold of him. Pratt stated he was headed to work. He arrived 45 minutes late for his shift. When Kieft saw Pratt next he asked what happened. Pratt again stated he had slept

through his alarms. When Kieft asked Pratt what he was going to do to make sure this did not happen again, Pratt stated he would continue to set alarms but acknowledged he had said that before. On September 23, Kieft issued Pratt a final written warning for again violating the Attendance and Punctuality policy. (Jt. Exh. 11). The warning summarized the above occurrences and concluded that a further violation could lead to corrective action, up to and including termination.

In October, Richard Flor took over as the SM for the 23rd & Burnside store, and Pratt continued to have attendance issues. He clocked in 6 minutes late on October 18, 9 minutes late on October 19, 6 minutes late on October 21, and 23 minutes late on October 22. On November 9, Flor and DM Runyon met with Pratt and issued him a Notice of Separation citing his continued "irregular" time and attendance. (Jt. Exh. 12.) The Notice of Separation referred to Pratt's prior final written warning and subsequent occurrences since that warning. In the discharge meeting, Pratt explained he arrived on time on October 18, 19, and 21, but it took a few minutes to unlock the door and get into the store, turn off the alarm, and then clock in. He also stated there were technology glitches, and partners were not able to clock into the system on time. (Tr. 282.) Runyon asked Pratt why he did not write those situations down in the DRB. Pratt stated that everywhere he worked the SMs understood it took a few minutes to get into the store, get everything unlocked, and they would usually fix the time entries. But Pratt acknowledged he did not raise this matter with Flor. (Tr. 296.) Runyon explained to Pratt the reason he was being discharged was because he arrived 23 minutes late on October 22, when he was the opening SSV, causing the store to open to customers 5 minutes late. (Tr. 283-284.)<sup>26</sup>

<sup>24</sup> The General Counsel offered Pratt's handwritten notes he prepared following the August 6 meeting. Respondent objected contending they were hearsay. Pratt testified it took him about 10 minutes to get home after the meeting and begin preparing the notes. The General Counsel argued the notes were admissible as Pratt's present sense impression under Fed. R. Evid. 803(1). I sustained the objection and rejected the exhibit.

Although I found Pratt to be a largely credible witness, I do not credit his estimate that it only took him 10 minutes to get home. According to the August 6 warning, when Pratt called in and said he was on his way to work, he arrived 15 or more minutes later. From that, I conclude it took him closer to 15 minutes to travel between his home and the store.

Rule 803(1) defines present sense impression as a "statement describing or explaining an event or condition, made while or immediately after the declarant perceived it." The Rule does not define "immediately" but scholars have noted "[a] statement made longer than a few minutes after a statement is unlikely to be admitted." 1 Stephen A. Saltzburg, Michael M. Martin, & Daniel J. Capra, FEDERAL RULES OF EVIDENCE MANUAL § 803.02[2][b] (12th ed. 2019). They have stated the immediacy requirement "must be rigorous because the passage of time—or lack thereof—is the effective proxy for the reliability of the substance of the declaration." *Id.* The Fifth Circuit, for example, has held, "an out-of-court statement made at least fifteen minutes after the event it describes is not admissible unless the declarant was still in a state of excitement resulting from the event." *United States v. Cain*, 587 F.2d 678, 681 (5th Cir. 1979). Cf. *U.S. v. Dean*, 823 F.3d 422 (8th Cir. 2016) (911 calls made minutes after shooting held to be present sense impression); *United States v. Shoup*, 476 F.3d 38, 42 (1st Cir. 2007) (911 calls made minutes after reported event admissible as present sense impression).

Even if it was in error to exclude the notes, the portions covering the August 6 disciplinary meeting over Pratt's attendance are consistent with his testimony, which I have credited.

<sup>25</sup> Pratt noted the prior documented coaching was 10 months earlier, and it was his understanding that discipline fell off after six months. Pratt was mistaken. (Tr. 289-290). Pratt recalled that in their discussion about the discipline, Kieft said he had gone through the PRSC, and he "insinuated" the decision was out of his hands. (Tr. 270-271). In other conversations, Pratt recalled Kieft stating once the Union was certified for the 23rd & Burnside store partners, he had to go through PRSC on disciplinary matters. (Tr. 271). Kieft admitted consulting with PRSC regarding Pratt's warning, but he denied that he was required to do so. (Tr. 494-495).

<sup>26</sup> Respondent presented evidence of other partners disciplined or discharged under the Attendance and Punctuality policy. Benson was discharged after they displayed a pattern of irregular time and attendance on 19 occasions between February and June 2022. After receiving both a written warning (in March) and a final written warning (in May), Benson called out or went home early 30 percent of their shifts during a six-week period. (R. Exh. 3.) Houck received a written warning for displaying "irregular time and attendance" for 38 percent of his shifts over a 6-week period between January and February 2023. (R. Exh. 4.) Clark received a final written warning for a no-call, no-show on February 4, 2022, that resulted in the store closing early. (R. Exh. 11.) Clark had a prior discipline, but the record does not reflect when or why. (Tr. 498.) Cadotte received a written warning after they did not show up for their scheduled shifts on November 11 and 12, 2022, and then texted the SM nine hours after the start of their shift on November 12 to report they were sick. (R. Exh. 13.)

### G. Brian Mendez

#### 1. Background

Brian Mendez began working for Respondent in March 2008. He has worked as an SSV the 5th & Oak store since September 2020. He reports to SM Lynae Carlin.

The 5th & Oak store is a café inside the Bancorp Tower in downtown Portland. There are two exterior doors into the café lobby. There is a front door that leads out to Oak Street, and there is a side door that leads into the atrium of the Bancorp Tower building. Each door has a manual lock. (Tr. 340–341.) The store is open Monday through Friday, and typically closes at 5 p.m.

Mendez often works as the closing SSV on duty. When he does, he typically begins his closing cash controller duties at around 3 p.m. He begins by closing and counting two of the three cash register tills and starts putting together the bank deposit. He then takes the two counted tills and puts them in the safe with the daily deposit. That safe is between the two counter registers. Then, at around 5 p.m., Mendez will lock the two doors, take the last cash till out, and count it. Once he is finished, he will log the deposit and put that last till in the safe. (Tr. 338–339).

#### 2. Union Activity

After the Union won the election at the 5th & Oak store, Mendez began wearing a union pin on his work apron almost daily. (Tr. 335–336.) He also signed a “Dear Howard” letter. (Jt. Exh. 23(b).) On November 17, 2022, Mendez participated in the Red Cup Rebellion strike outside the 5th & Oak store. Red Cup Day is an annual event where Respondent gives away reusable red holiday cups to customers when they make a drink purchase. It is one of the busiest days of the year. (Tr. 349–351.)

#### 3. Final Warning

On the evening of November 16, the day before the Rebellion, Mendez was working, along with SSV Andwele Castleberry and barista Tatsu Elason, performing a deep cleaning of the store. Surveillance video footage from that evening was introduced into evidence. (Jt. Exhs. 18(e)-(g).) At about 3:32 p.m., Mendez began performing his pre-close cash controller duties. At about 3:44 p.m., he opened the safe and put two of the three counted tills and bank deposit inside. He then closed the safe and locked it. At 4:59 p.m., Mendez locked the two lobby doors. At 5:45 p.m., Mendez let Elason out the front door to take his break, and then Mendez relocked the door. At about 5:59 p.m., Mendez is counting the last cash till with the safe door open. At around this same time, Castleberry goes to the front door to let Elason back inside.<sup>27</sup> Castleberry, however, failed to relock the front door

<sup>27</sup> The General Counsel points out there is a 2-second difference between when Mendez closes the door to the safe at 6:00:03 p.m., and Castleberry opens the front door to let Elason back in at 6:00:05 p.m.

<sup>28</sup> During her testimony, Carlin referred to her colleague as Pam “Scannell.” Freeman did not testify, but the statement she prepared about the morning of November 17 lists her last name as Freeman. (R. Exh. 8.)

<sup>29</sup> Mendez recalled two instances where someone was able to pull/push the front doors open when they were locked. Both times Mendez reported the issue the SM at the time. A locksmith was called to come and tighten the locks. There also was a situation in which Mendez’

following Elason’s return. At around 7:30 p.m., all three left for the night, exiting through the side door. No one checked to make sure the front door was locked before leaving. (Tr. 344–346.)

The following day, at 4:54 a.m., an unidentified man entered the store through the front door. He sat down and plugged his phone into an outlet. (Jt. Exh. 18)(Tr. 397). At 5:06 a.m., Pam Freeman, an SM from the 21st & Lovejoy store, entered the store through the front door to drop off cups. (R. Exh. 8.).<sup>28</sup> Freeman called SM Carlin to tell her the front door was unlocked and there was a man sitting in the lobby. (Tr. 405.) At 5:15 a.m., Carlin entered the store through the front door. She asked the man to leave, and he did. (Tr. 397–398.) Carlin later posted signs on both doors telling customers the store would be closed that day. She and Freeman then left and locked the front door.

Mendez next worked on November 22. Carlin asked him if anything “weird” happened the evening of November 16. Mendez said not that he was aware of. Carlin then informed him the front door had been left unlocked and somebody had entered the store and used one of the store’s electrical outlets to charge their phone. Mendez responded the front doors are terrible, and that there have been times people just tugged on them hard enough and they opened.<sup>29</sup> (Tr. 351–352.) Carlin and Mendez then went and tested the front door to see if it unlocked or opened when she pulled hard on it, but the door remained shut and locked. Carlin spoke with Mendez, Castleberry and Elason. She then emailed the information she gathered from them to DM Ott. (R. Exh. 5)(Tr. 399–401).

On December 5, DM Ott and SM Carlin met with Mendez and presented him with a final written warning. (Jt. Exh. 13.) It stated that on November 16, Mendez was the closing SSV, and it was discovered the morning of November 17 that the front door to the store was left unsecured overnight, in violation of the Opening and Closing Safety Procedures. It also was discovered that while the front door was unlocked Mendez had the safe open and was performing cash-handling duties, in violation of the Starbucks Cash Handling Steps to Excellence policy. On December 12, DM Ott also issued Castleberry a final written warning for the same reasons. (R. Exh. 9.)<sup>30</sup>

### H. Alicia Flores

#### 1. Background

Alicia Flores began working for Respondent in 2016. In around March 2022, she transferred to the Macadam Avenue store, where she has worked as an SSV. In the latter part of 2022, Flores reported to SM Amber Clenaghan.

#### 2. Union Activity

Flores was a supporter at the Macadam Avenue store. In

key got stuck in the lock to the front doors. He called SM Carlin, who came to the store. A locksmith eventually came and got the key out of the lock. The lock worked after the key was removed. Mendez described that after these instances there have continued to be issues with the front doors not sitting flush with one another. (Tr. 353–356.)

<sup>30</sup> Castleberry previously received a written warning on November 11 for attendance. Ott testified he would have received a final warning for November 17, regardless of his prior discipline, because of the nature of the violation. (Tr. 447.)

around May 2022, she began distributing information and authorization cards to employees. Additionally, to show her support, she regularly wore a union pin on her work apron, including during shifts where she worked alongside Clenaghan. (Tr. 177–179.) Flores also was one of the employees who signed the June 5 letter sent to Respondent’s CEO Howard Schultz setting forth the reasons why the employees at the Macadam Avenue store were organizing. (Jt. Exh. 23(c).)

### 3. Final written warning

On December 8, Flores was working during a busy morning shift as the SSV. A barista named Anthony (last name not provided) was scheduled to work with Flores, but he arrived late for his shift. His girlfriend came with him into the store. Anthony came behind the bar and asked Flores, who was at the register, to “markout” his (free) beverage and food item using his employee number. Flores did so without asking who the items were for. Anthony began working.<sup>31</sup>

Clenaghan saw the girlfriend sitting in the lobby with a beverage and food item with Anthony’s name on the cup and warming bag and concluded Anthony had given it to her in violation of company policy. Clenaghan asked Flores to coach Anthony on the policy. Flores testified she eventually spoke to Anthony and told him not to do it again. Anthony later notified Flores he was disciplined for violating the policy. (Tr. 198).

On December 16, Clenaghan, along with a SM from another store, met with Flores and presented her with a written warning for violating the Register Operation and Customer Transactions policy. (Jt. Exh. 14.) The warning stated that on December 8, when Clenaghan asked Flores if Anthony had marked out food for his girlfriend, Flores said she believed he may have marked it out prior to his shift. Clenaghan then pointed out that Anthony was 6 minutes late for his shift so she did not understand how he could get his markout when he arrived late. The warning further states that Flores informed Clenaghan she would coach Anthony on the policy. On December 12, Clenaghan followed up with Flores to see if she had spoken to Anthony. Flores stated she would coach him.<sup>32</sup> Clenaghan later spoke to Anthony to ensure the coaching had taken place. In that conversation, Anthony

<sup>31</sup> In general, I did not find Flores to be a reliable witness. She had a less than candid demeanor and her testimony was inconsistent and unbelievable. For example, she testified she did not know Anthony was ordering the items for his girlfriend. However, she saw Anthony arrive with his girlfriend, place his order and began working, while his girlfriend remained in the lobby. I find that Flores was aware, both by policy and practice, that he could not consume the items ordered while working, particularly considering this happened during a busy morning rush.

<sup>32</sup> Flores also appeared to contradict herself was on when she spoke to Anthony about the policy. She testified it was on December 8, but she later equivocated when presented with the warning. She testified as follows:

Q: Do you see where it says on Monday, December 12th, 2022 Ms. Clenaghan "followed up with Alicia to see if she had the chance to connect with Anthony involving the partner markout policies. She informed me that she would"?

A: Yes.

Q: Is that a correct description of events?

A: The first part, yes.

JUDGE GOLLIN: So what she's asking you, you testified that when she first talked to you about talking to Anthony, after you had the

stated Flores had handled the transaction at the register, and he should not have given her his partner number and it was a misuse of the policy.

Flores testified about an incident where she was working with Clenaghan at closing time. As they were finishing up, Clenaghan mentioned she was going to pick up her daughter after work and wanted to bring her a coffee beverage. Flores marked out the free beverage by entering Clenaghan’s number into the register. (Tr. 181.) To Flores’s knowledge, Clenaghan was not disciplined for this.

### I. STEVEN SHERMAN

Steven “Steelo” Sherman worked as a barista at the Jantzen Beach store from November 2021 to November 2022, when he quit. He initially reported to Brook Long and then to SM Jude Mackintosh. Throughout his employment, Sherman regularly wore the same type of clothing, hats, and jewelry to work. He wore the same three or four T-shirts, which had non-Starbucks logos or messages, such as “Black Lives Matter” and “La Familia over Everything.” He also wore hoodies. One had a Snoopy logo on the back. When he wore his work apron, it would cover most or all of the messages or logos. Sherman also wore hats with small non-Starbucks logos or designs, such as a small daisy or an ice cream cone, and one or more gold chain necklaces outside of his clothing. All of this violated the Dress Code policy, but nothing was said to Sherman about it.

Then, in early September 2022, SM Mackintosh approached Sherman in the backroom and told him the hat and gold chain necklace(s) that he was wearing did not comply with the Dress Code policy. (Tr. 215.) The following day, Mackintosh again approached Sherman and again told him the hat and chain necklaces he was wearing were not in compliance with the Dress Code policy. Sherman asked Mackintosh if he was in trouble or getting disciplined, and she said no. (Tr. 217.)

On September 6, Mackintosh and an unidentified SM from another store met with Sherman and issued him a documented coaching for failing to comply with the Dress Code policy. (Jt. Exh. 10.) The coaching states that there had been “multiple

conversation, you went to talk to Anthony, and said don't ever do it again, right?

THE WITNESS: Yes.

JUDGE GOLLIN: So the question is, is that—did that happen on the day that she talked to you, or at a later point?

THE WITNESS: I think it's a later point.

Q BY MS. VIDA: Did you coach Anthony the day—the first day that Amber—Ms. Clenaghan talked to you about coaching him?

A: Yes.

Q: And you didn't ta—did you talk to him at any—did you coach him at any later point?

A: No. Just right after that one moment.

Q: Do you know why this says that on the following Monday Ms. Clenaghan asked you if you would coach it, and you said that you would?

A: No, if I'm being honest. Like, I don't know why that's there; that's what I should say.

Q: Did you ask Ms. Clenaghan about that?

A: No.

(Tr. 189–190).

conversations in the past surrounding [Sherman's] inability to adhere to [the Dress Code policy]. These conversations regarding [Sherman] wearing shirts with large logos and hoodies have been challenging as we have failed to come to any kind of resolution through open and honest dialog. To date little or no progress has been made to improve the lapse in expectations and this is a clear violation of policy as outlined in the Partner Guide.” The other SM provided Sherman with copies of the Dress Code and descriptions and examples from the Lookbook of acceptable and unacceptable attire, hats and apparel. Mackintosh and the other SM stated they hoped to “solve” the issue of Sherman’s Dress Code compliance within the next week. Sherman interpreted this to mean he would have a week to purchase and begin wearing clothing, hats, and other apparel that complied with the Dress Code policy.

The following day, Sherman arrived for work wearing pink sweatpants, a sweatshirt with a logo, and a hat. He also had a gold necklace on the outside of his sweatshirt. DM Runyon was at the Jantzen Beach store that morning. She saw Sherman and commented that head-to-toe he was out of compliance with the Dress Code. (Tr. 222–223.) Sherman responded that with the staffing issues the store was facing recently he believed she had bigger fish to fry. (Tr. 223–224.)

Based on the record, Sherman appears to be the first partner at the Jantzen Beach store to receive a documented coaching for violating the Dress Code policy. Long testified about her practice as SM, stating as follows:

Any kind of conversation around dress code was coming from, like, a supportive place, like, hey, let's revisit these policies. Let's talk about why you're not in dress code, and how can I help you to, you know, adhere to the dress code policy . . . . You know, there was always—it was always coming from a place of support. And also just establishing why we had those policies.

(Tr. 452.)

Long described specific instances where she verbally coached partners who came to work wearing inappropriate clothing or shoes, or who had acrylic nails or other adornments that posed a safety concern. She testified that if there were other clothing or shoes available, the partner was told to change and then could remain at work. If not, the partner was sent home. (Tr. 462–463.) Long recalled two instances at the store where partners were sent home. When asked if the partners who violated the policy ever received documented coaching, Long said “[i]f things needed to be escalated, then it was documented if it was more than once or twice or three times.” (Tr. 467). She provided no further explanation or examples of that occurring, and there was no further evidence on that point.

There is no dispute Respondent did not provide the Union with prior notice or an opportunity to bargain over its intent to begin

<sup>33</sup> Respondent bears the burden of proof regarding the affirmative defenses raised in its Amended Answer. To the extent it failed to present evidence or argument in support, I conclude the defense has been abandoned.

issuing documented coaching for violations of the Dress Code policy, or that it intended to issue a documented coaching to Sherman for violating the policy. (Tr. 468–469.)

#### LEGAL ANALYSIS

As stated, the complaint alleges Respondent: (1) violated Section 8(a)(1) when it threatened to withhold previously announced wage increases and benefit improvements because employees were in the process of joining the Union, and when it began selectively and disparately enforcing its Register Operation and Customer Transactions policy against employees at its Macadam Avenue store who supported the Union: (2) violated Section 8(a)(3) and (1) when it disciplined employees Chloe Peterson, Trey Hawthorne, Arthur Pratt, Alicia Flores, and Brian Mendez, and when it discharged Pratt and employee Matthew Thornton, because they each engaged in protected, concerted and/or union activities; and (3) violated Section 8(a)(5) and (1) when it began enforcing the previously unenforced Dress Code policy at its Jantzen Beach store without providing the Union with prior notice and an opportunity to bargain with respect to this change and/or its effects, and by issuing a documented coaching to Steven Sherman for violating the policy. Respondent denies these alleged violations and raises various affirmative defenses.<sup>33</sup>

#### II. 8(A)(1) ALLEGATION

Paragraph 6 of the complaint alleges Respondent violated Section 8(a)(1) of the Act on about May 8, 2022, when then-ASM Jude Mackintosh,<sup>34</sup> at the Jantzen Beach store, threatened to withhold previously announced wage increases and benefit improvements because employees at that store were in the process of joining the Union. As stated, Mackintosh told SSV Isabelle Loverich on May 8, during their one-on-one conversation, that she was informing the other partners at the store that they would not be eligible for the new benefits Respondent was rolling out at its non-union stores, which included credit card tips, improved healthcare, and a pay raise. Mackintosh also said that in bargaining (at the unionized stores), wages could go up or down. These statements were made about a week before the ballots were mailed out to the Jantzen Beach partners to vote on whether they wanted to be represented by the Union.<sup>35</sup>

Section 8(a)(1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The Board has held it is a violation of Section 8(a)(1) for a supervisor or agent to promise to provide or threaten to withhold wages or benefits during an organizing campaign, in order to dissuade employees from supporting the union. See *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964). See also *Woodcrest Health Care Center*, 366 NLRB No. 70, slip op. at 6

<sup>34</sup> Although paragraph 6 of the complaint alleges Mackintosh was an SM at the time she made the statements to Loverich, the parties stipulated she remained an ASM until June 3, 2022, when she was promoted to SM.

<sup>35</sup> The allegation Respondent began selectively and disparately enforcing its Register Operation and Customer Transactions policy is addressed below in the section addressing Flores’ warning.

(2018), enfd. sub. nom *800 River Road Operating Co. LLC v. NLRB*, 779 F.App'x. 908 (3d Cir. 2019). See also *Care One at Madison Avenue*, 361 NLRB 1462, 1474 (2014), enfd. 832 F.3d 351 (D.C. Cir. 2016); *Associated Milk Producers, Inc.*, 255 NLRB 750, 755 (1981).

The preliminary issue, however, is whether ASM Mackintosh was a statutory supervisor and/or an agent acting with actual or apparent authority when she made the statements at issue. If not, the complaint allegation must fail as the statements would not be attributable to Respondent.<sup>36</sup>

Section 2(11) of the Act defines a supervisor as any person having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The party asserting supervisory status has the burden of proof. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 710–712 (2001). Job titles and descriptions are not controlling; rather it turns on the authority actually possessed and whether its exercise involved the use of independent judgement. *Oakwood Healthcare*, 348 NLRB 686, 687, 690 fn. 24 (2006). Similarly, inferences and conclusory statements are insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006).

The General Counsel, in her posthearing brief, argues Mackintosh was a statutory supervisor at the time she made the statements at issue, but she does not identify or address Mackintosh's purported supervisory authority, or whether the exercise of that authority involved the use of independent judgement. Instead, she provides a list of representation and unfair labor practice cases in which the ASMs, by agreement, were held to be statutory supervisors. Not cited are the cases in which the parties agreed ASMs were non-supervisory, see e.g., *Starbucks Corporation*, 2023 WL 4363911 (2023), or, like here, in which the parties disagreed over their supervisory status but deferred a determination until after the election, see e.g., *Starbucks Corp.*, 371 NLRB No. 71 fn. 5 (2022), and *Starbucks Corporation*, 2023 WL 8187345 (2023). Regardless, as stated, whether Mackintosh possessed a "supervisory" job title is, alone, not enough to establish supervisory status.

The General Counsel also argues Respondent is bound by its Statement of Position in Case 19–RC–293238, in which it asserted that Mackintosh, as an ASM, was a statutory supervisor. For support, the General Counsel cites to *Raley's*, 348 NLRB 382, 501–502 (2006). In *Raley's*, the judge found an attorney's position statement submitted during the Board's investigation *as to what the factual evidence would show* could be relied upon as an admission at trial when those assertions are in conflict with the party's litigation position or the testimony of the party's witness. Here, in contrast, Respondent's Statement contains no factual assertions, only legal ones. Without support or explanation,

<sup>36</sup> The lawfulness of Respondent's announced plans to implement increased wages and improved benefits at its nonunion stores, described in "Creating Our Future Together as Partners" and "Partners, You Have a Choice: Get the Facts" on the Partner Hub, were not at issue in this proceeding. Those matters were separately litigated before Administrative

the Statement asserted that, as an ASM, Mackintosh was ineligible because she "exercise[d] one or more indicia of supervisory status under the Act." Such conclusory statements are not enough to meet the burden of proof. Consequently, I conclude the General Counsel has failed to meet her burden of establishing that Mackintosh was a statutory supervisor at the time she made the statements at issue.

The inquiry then moves to whether Mackintosh was a statutory agent acting with actual or apparent authority. The Board applies common-law principles in order to determine whether an employee was acting as an agent, within the meaning of Section 2(13) of the Act. See e.g., *D&F Industries*, 339 NLRB 618, 619 (2003); *Hausner Hard-Chrome of Kentucky, Inc.*, 326 NLRB 426, 429 (1998); *Southern Bag Corp.*, 315 NLRB 725 (1994); *Great American Products*, 312 NLRB 962, 963 (1993). One such principle is apparent authority, which "results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question." *Hausner Hard-Chrome of Kentucky, Inc.*, supra; *Southern Bag*, supra; *Great American Products*, supra. The Board has long held that, under this doctrine, the test for determining whether an employee is an agent of the employer is whether, under all the circumstances "the employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management." *Waterbed World*, 286 NLRB 425, 426 (1987) (citations omitted). As stated in Section 2(13), when making the agency determination, "the question of whether the specific acts performed were actually authorized or subsequently ratified should not be controlling, and, under Board precedent, an employer may have an employee's statements attributed to it if the employee is held out as a conduit for transmitting information between management and the employees, so that the employees would conclude that the alleged agent was speaking on management's behalf when making the statement or engaging in the conduct at issue. See, e.g., *Victor's Café* 52, 321 NLRB 504, fn. 1 (1996); *Southern Bag Corp.*, supra. The burden to prove agency status rests upon the party asserting it. *Pan-Oston Co.*, 336 NLRB 305, 306 (2001).

The General Counsel, in her posthearing brief, makes no arguments about Mackintosh's agency status, whether she possessed actual or apparent authority, or whether she reasonably could be found to have been speaking on Respondent's behalf. The record contains minimal evidence about Mackintosh's actual duties, authority, or whether she was used as a conduit of information between management and partners, when she was an ASM. Loverich testified that prior to the May 8 conversation she spoke to Mackintosh about her schedule because, from Loverich's understanding, Mackintosh was training to become a SM, and was learning about scheduling. Loverich's communications with Mackintosh, at this time, were limited to her work schedule and the reduction in her hours. It is reasonable to conclude from

Law Judge Mara-Louise Anzalone. On September 28, 2023, ALJ Anzalone issued her Decision (JD(SF)-29-23), finding Respondent's conduct violated Secs. 8(a)(1) and (3) of the Act. Those findings are now on exception to the Board for its review.

Loverich’s description that Mackintosh was speaking on behalf of management when she spoke to Loverich about her schedule. And while Loverich initially went to speak to Mackintosh on May 8 about that topic, once those issues were discussed, Mackintosh changed topics and made the statements at issue about the increased wages and improved benefits that Respondent was offering at its nonunion stores. There is no evidence Respondent previously used Mackintosh as a conduit for communicating information about those topics to Loverich or any other partners at the Jantzen Beach store. There also is no evidence suggesting an SM, a DM, or any other member of management later adopted or ratified Mackintosh’s statements to Loverich about those topics. Thus, I conclude the General Counsel has failed to meet her burden of establishing that Mackintosh was acting as an authorized agent when she made the statements at issue.

Accordingly, I recommend dismissing the allegation.

### III. 8(A)(3) ALLEGATIONS

#### A. Overview

The complaint alleges Respondent violated Sections 8(a)(3) and (1) of the Act when it discriminatorily disciplined Hawthorne, Flores, Pratt, Peterson, and Mendez, and discharged Thornton and Pratt, because they engaged in protected activities. Respondent denies those allegations and contends that each adverse action was based on legitimate, nondiscriminatory reasons.

Section 8(a)(3) makes it an unfair labor practice for an employer “by discrimination in regard to hire or tenure of employment or any term or condition of employment[,] to encourage or discourage membership in any labor organization.” When assessing the lawfulness of an adverse action that turns on employer motivation, or where there is a dual motive, the Board applies the analytical framework set forth in *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved by *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395 (1983). To prove a violation under *Wright Line*, the General Counsel must demonstrate by a preponderance of the evidence that the employee’s protected or union activity was a substantial or motivating factor in the employer’s decision. *SBM Site Services, LLC*, 367 NLRB No.147, slip op. at 2 (2019). The General Counsel satisfies the initial burden by showing that: (1) the employee engaged in union or other protected activity, (2) the employer had knowledge of the activity, and (3) the employer had animus against union or other protected activity. Animus can be established through direct evidence or inferred from circumstantial evidence on the record as a whole. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. 6–7 (2023).<sup>37</sup> Circumstantial evidence of discriminatory motive may include, among other factors, the timing of the action in relation to the union or protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons, offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. *Id.*

If the General Counsel meets this *prima facie* burden, the

burden of proof shifts to the employer to demonstrate it would have acted the same had the protected or union activity not occurred. *Wright Line*, 251 NLRB at 1089. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must persuade, by a preponderance of the evidence, that the adverse action would have taken place absent the protected or union activity. *Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 1–2 fn. 5 (2022), and cases cited there. If the employer fails to meet this burden, a violation will be found because a causal relationship exists between the employee’s protected activity and the employer’s adverse action. *Intertape Polymer Corp.*, *supra*

The employer’s burden cannot be satisfied by proffered reasons that are pretextual, i.e., false reasons or reasons not in fact relied upon. Indeed, where the reason advanced by an employer for the adverse action either did not exist or was not actually relied on, the inference of unlawful motivation remains intact, and is in fact reinforced by the pretextual reason proffered by the employer. *Id.*

#### B. Thornton’s Discharge

Paragraph 7 of the complaint first alleges Respondent discriminatorily discharged Matthew Thornton on April 29, 2022. Respondent argues it lawfully discharged Thornton because he repeatedly violated the Opening and Closing Safety Procedures requiring that he, as the closing SSV on duty, ensure all access points were securely locked before leaving the store.

To meet her initial burden under *Wright Line*, the General Counsel points out that upon learning of the organizing campaign at the Jantzen Beach Store, Thornton openly spoke with his coworkers about the Union at work, and he continued openly supporting the Union by wearing and distributing union pins and T-shirts and posting union flyers in the back of the store. The General Counsel argues, without further explanation, that knowledge of these activities should be inferred from the totality of the circumstances. Based upon my review, I credit Hawthorne’s testimony that SM Long and DM Runyon had knowledge of Thornton’s union support because they were present when he wore union T-shirts and pins to work beginning in early April 2022.

As for animus, the General Counsel points, generally, to Respondent’s “heated fight against the Union nationwide.” In her brief, there is a footnote with a string citation to recent Board and ALJ decisions in which Respondent was found to have violated the Act in response to organizing efforts. Lacking, however, is any explanation or argument connecting the details of those cases to those in these cases. The implication being that because Respondent was found to have animus in those cases, animus should be inferred in these cases. Without more, I decline to make such a generalized inference.

The General Counsel next points to Long’s comments to Thornton that once the partners at the Jantzen Beach store organized she lost the authority to independently issue discipline and had to consult with upper management or PRSC before taking

<sup>37</sup> In her posthearing brief, the General Counsel argues for the Board to reconsider and overrule its holdings in *Electrolux Home Products*, 368 NLRB No. 34 (2019) and *Tschiggfrie Properties, Ltd.*, 368 NLRB

No. 120 (2019). The Board addressed similar arguments in *Intertape Polymer Corp.*, which issued after the parties submitted their briefs in this case.

any action. Citing to *BS&B Safety Systems, LLC*, 370 NLRB No. 90 (2021), the General Counsel argues this “change” in practice in response to the employees’ unionization is evidence of animus and pretext for all the adverse actions at issue in which PRSC was consulted. In *BS&B*, the Board adopted the ALJ’s finding that the discharge of a union supporter for production errors was discriminatorily motivated based, in part, on the evidence of pretext, including the employer’s shifting explanations, its failure to meaningfully investigate, and its disparate (lesser) treatment of others for the same errors. As for the investigation, the judge relied upon the unprecedented and half-hearted nature in which it was conducted. Specifically, it was coordinated by a high-level manager with no prior involvement in investigating or disciplining employees for the type of errors at issue, and he directed a lower-level manager to materially omit/change certain findings to support the discharge decision. The ALJ also noted the employer failed to make inquiries of the discriminatee or other employees to get to the truth of what happened and instead focused on editing the facts to provide cover in the event the discharge was later challenged. Here, the General Counsel argues that Respondent’s change of involving PRSC is akin to the change in *BS&B*. I find the cases clearly distinguishable. The change in *BS&B* was tailored to a specific employee, not an entire workforce; it was not based on any underpinnings; and it was one of several factors supporting a finding of animus and pretext. Requiring consultation with higher-level management and/or human resources before taking adverse actions after employees unionize may be for lawful business reasons, including avoiding violations committed by lower-level supervisors unfamiliar with the rights and responsibilities that arise once there is a collective-bargaining relationship, and not in-and-of-itself evidence of animus or pretext.

The General Counsel also cites to Mackintosh’s May 8 comments to Loverich. For the same reasons I find those statements cannot be attributable to Respondent, they cannot be relied upon as evidence of animus. Finally, the General Counsel cites to Kingrey’s comments in her May 14 letter, allegedly “laying the blame on the Union for employees losing work opportunities.” Kingrey’s comments were in response to the Union’s false accusations that Runyon unlawfully threatened employees for engaging in protected activity, which the Union later retracted. In that context, I find there is no basis to conclude such statements constitute antiunion animus.

The General Counsel also relies on the timing of Thornton’s discharge. She contends that within days of Thornton starting to speak about the Union while at work, he was issued a final written warning for his attendance on March 25, 2022, and then shortly thereafter he was discharged for the Safety and Security Manual violations. I reject this argument because, as stated, the first evidence Respondent had of Thornton’s union support was not until early April 2022, when he began wearing union T-shirts and pins to work on days when Runyon or Long were present.

The General Counsel raises several arguments for how Respondent’s reliance on Thornton’s September 2021 final written

warning establishes animus. First, she argues Respondent failed to remove that warning despite Thornton providing the “exculpatory” alarm system printout to Long more than six months earlier. As stated, the printout showed the alarm system had been accessed by someone using a vendor code around two hours after closing, but it does not show which door the individual entered or exited through. After Thornton denied leaving the store unsecured and suggested it may have been one of the delivery drivers, Long contacted LSR and found nothing that exonerated Thornton. This determination was made months before the Union organizing effort. Later, Runyon, at Thornton’s request, conducted an inquiry, and she also found no evidence to exonerate Thornton.

The General Counsel next argues Respondent failed to conduct a full and fair investigation into the April 2022 violations, prior to discharging Thornton. Specifically, Runyon did not view the surveillance video from the evenings in question, and no one spoke with Thornton, or gave him an opportunity to address the violations. These points, while true, do not establish animus or pretext because they are wholly consistent with Respondent’s handling of Thornton’s September 2021 final warning. There, Long relied solely upon the opening SSV’s reports, without reviewing the surveillance video, and without questioning Thornton or giving him an opportunity to explain. When Thornton balked about signing the warning, Long told him that if he could prove his innocence, she would rip up the discipline. One difference is that in April 2022 Runyon contacted Tazelaar because she was aware of Thornton’s prior claim that a vendor left the door open, and she asked Tazelaar to review surveillance video from April 14, and to inform her on what she observed. Tazelaar’s report confirmed that a vendor accessed the store after hours but did so through the opposite door left unlocked.<sup>38</sup>

Another key difference between the September 2021 warning and April 2022 discharge was Thornton’s reactions. In September, Thornton denied culpability and demanded an investigation. In April, he pleaded with Long and Runyon to consider disciplinary options that would allow him to keep his job, including transferring him to another store where the drive-thru window locked automatically, or demoting him (again) to a barista, where he would no longer have the responsibility of ensuring the store was secure at closing. Additionally, during his testimony, Thornton did not deny responsibility for the April 2022 violations like he did the September 2021 violation. The combination of these factors, I find, is a tacit admission that he was responsible for the violations.

Based on the foregoing, I conclude the General Counsel has failed to meet her burden of establishing by a preponderance of the evidence that Thornton’s discharge was discriminatorily motivated. However, even if she had, I conclude Respondent has established it would have taken the same action in the absence of any protected activity. Respondent issued Thornton a final written warning for the exact same conduct several months prior to learning of any union activity. The General Counsel argues Respondent merely issued a final written warning for that violation,

<sup>38</sup> As for leaving the drive-thru window unlocked, the General Counsel contends Respondent failed to prove that Thornton worked as the closing SSV that evening. However, Thornton admitted that he did. And, unlike

the exterior door, he cannot blame a vendor for leaving the window unlocked.

which proves pretext. This argument ignores the reality that Thornton's April 2022 violations marked the second and third times he violated Opening and Closing Safety Procedures in a 7-month period. While there is no evidence of another discharge for violating these Procedures, there also is no evidence of this level of recurrence by another partner. Accordingly, I recommend dismissing this allegation.

#### C. Hawthorne's Final Written Warning

Paragraph 7 of the complaint further alleges Respondent discriminatorily disciplined Trey Hawthorne by issuing him a final written warning on June 29, 2022. Respondent defends it lawfully issued Hawthorne the warning because he violated the Recording Time Worked policy on the evening of June 9, when he clocked out at 6:03 p.m. but remained in the store until 7:30 p.m.

To meet her initial burden under *Wright Line*, the General Counsel argues Hawthorne engaged in known protected union activities when he spoke at the May 10 rally, participated in the May 17 strike, posted a June 14 message on Twitter in support of the Union's actions at his store with respect to management having to reschedule an investigatory meeting, and, finally, sought the assistance of a union representative during his June 23 investigatory meeting. Based upon my review, I conclude Respondent had knowledge of Hawthorne's union support when it discovered his Twitter message, which Partner Resources Manager Jessica Durham questioned him about during his June 23 investigatory meeting.

The General Counsel raises several arguments as it relates to animus. I find animus based on the tone and contents of Durham's questioning of Hawthorne about his Twitter message about Runyon, insinuating that his support for the Union and fellow Union supporters may have violated Respondent's social media policies.

In the June 23 interview, Durham told Hawthorne she had surveillance video showing he worked off the clock on the evening of June 9, which the evidence shows was untrue. The surveillance video footage introduced by the parties shows Hawthorne was not in the store during the timeframe alleged in the warning, and Respondent presented no other evidence establishing that he was there. In its brief, Respondent contends that any failure to present evidence about the alleged violation was because Hawthorne refused to answer any further questions during the interview. Hawthorne's failure to answer Respondent's questions does not change that its own surveillance video clearly shows he was not present and did not commit the violation alleged.

Based on the evidence, or, more aptly, the lack thereof, Respondent's stated reason for issuing Hawthorne the warning must be rejected as pretextual. When the employer's "asserted justification is a sham . . . the reason advanced may be termed pretextual [and] . . . there is, by strict definition, no dual motive." *Wright Line*, 251 NLRB at 1084. When an employer disciplines or discharges an employee known to have engaged in statutorily protected activities, and the employer has failed to establish a legitimate basis for the discipline or discharge, or if the reasons proffered are pretextual, the employer will be found to have committed an unfair labor practice. See *Transportation Management*, 462 U.S. at 398; *Adams & Associates, Inc.*, 363 NLRB 1923 (2016). I, therefore, recommend finding Respondent

violated Section 8(a)(3) and (1) when it issued Hawthorne the final warning.

#### D. Peterson's Final Written Warning

Paragraph 7 of the complaint also alleges Respondent discriminatorily disciplined Chloe Peterson by issuing her a final written warning on June 28, 2022. Respondent contends it lawfully issued Peterson the warning because, as the closing SSV on duty, she violated the Opening and Closing Safety Procedures by not ensuring all access points were securely locked before leaving the store at the end of her shift, violated the Safe Security policy by failing to close the safe, and for violating the Off-the-Clock Work policy.

The parties focus on whether Peterson engaged in protected activity, and whether Respondent discriminatorily disciplined her because of it. It is unnecessary to make that determination, however. The Board has held the discipline or discharge of even a neutral employee during an organizing effort violates Section 8(a)(3) and (1) when it is done to facilitate or cover up discriminatory conduct against a known union supporter. See generally, *Bay Corrugated Container*, 310 NLRB 450 (1993), enfd. 12 F.3d 213 (6th Cir. 1993); and *Dawson Carbide Industries*, 273 NLRB 382, 389 (1984), enfd. 782 F.2d 64 (6th Cir. 1986); and *Pioneer Drilling Co., Inc.*, 162 NLRB 918, 923 (1967).

Respondent issued Peterson the final warning to facilitate or cover up discrimination against Hawthorne, a known union supporter. Respondent issued Peterson the final warning, in part, because she, as the SSV, allegedly permitted Hawthorne to work off the clock on the evening of June 9. As discussed, that claim is a sham, and Respondent's decision to discipline Hawthorne was discriminatorily motivated. Peterson's warning is inextricably intertwined with Hawthorne's discriminatory warning, which I conclude under the circumstances also results in Peterson's warning being discriminatorily motivated, regardless of whether she engaged in protected activity of her own.

Although Peterson's warning addresses other alleged violations, they are contained in the same, single document as the discriminatorily motivated discipline. There is no severability. The unlawful component of the warning taints the entire warning. In analogous situations, the Board has held that discipline, based in whole or part on, prior or contemporaneous unlawful discipline, is tainted and also unlawful. See *Hays Corp.*, 334 NLRB 48, 50 (2001); *Dynamics Corp.*, 296 NLRB 1252, 1253-1254 (1989), enfd. 928 F.2d 609 (2d Cir. 1991). See also *Relco Locomotives, Inc.*, 358 NLRB 298, 311-312 (2012), rev. denied, enf. granted 734 F.3d 764 (8th Cir. 2013). Accordingly, I recommend finding Respondent violated Section 8(a)(3) and (1).

#### E. Pratt's Written Warning, Final Written Warning, and Discharge

Paragraph 8 of the complaint alleges Respondent discriminated against Arthur Pratt when it disciplined him on August 6 and September 23, and then discharged him on November 9, 2022. Respondent contends it lawfully took each of these actions because of Pratt's continued violation of the Attendance and Punctuality policy.

To meet her burden under *Wright Line*, the General Counsel argues Pratt was a union supporter from the outset of the

organizing effort at the 23rd & Burnside store. Respondent had knowledge of his support because he was seen by management, namely Kieft, wearing a union pin to work, and because he acted as union representative for Peterson during her investigatory meeting. PRSC representative Durham expressed hostility toward Pratt when he represented Peterson and asserted his right to do so in the face of Durham's statements that he could not speak or ask questions during the meeting. I conclude that reaction to Pratt's protected activity is evidence of animus.<sup>39</sup> The issue is whether that evidence is sufficient to establish, by a preponderance of the evidence, that Pratt's discipline and discharge were discriminatorily motivated. I conclude it is not.

The August 6 written warning covers Pratt's late arrivals on July 4, 5, and 22. On July 22, Pratt not only failed to arrive on time for his scheduled shift, but he failed to call in or notify anyone at the store as to his whereabouts. Kieft tried to contact Pratt but was unable to reach him. Pratt eventually arrived for work, but he was one hour and 7 minutes late. He does not dispute this.

Nor does he dispute that his attendance issues continued. He again was late on September 10 and 17. On September 17, Pratt again failed to call in or notify anyone as to his whereabouts. Another manager proxy had to track him down. Pratt finally arrived but 45 minutes late. He was the opening SSV on duty that day, and his late arrival meant the opening baristas could not enter the store and begin their scheduled work. Kieft issued Pratt the September 23 final written warning. That warning noted Pratt's repeated issues and clearly stated further occurrences could result in discharge.

Despite these warnings, Pratt continued to have issues arriving to work on time. He was late clocking in on October 18, 19, 21, and 23. As Runyon noted during Pratt's November 9 discharge meeting, his 23-minute late arrival on October 23 was the tipping point, because he was the opening SSV on duty that morning, and his late arrival meant the other partners could not enter the store to begin work, and the store opened late for customers.

The General Counsel argues in brief that Kieft was aware of Pratt's chronic fatigue following his surgery but never discussed scheduling Pratt for different shifts, or not scheduling him for Saturday mornings, as an accommodation. Pratt's medical release does not mention a modified schedule, and Pratt never requested it, even after Kieft asked him what could be done to address his attendance issues. Pratt responded that he wanted a consistent schedule, without any further specifics.

The General Counsel also argues disparate treatment, and that Respondent treated partners with more occurrences than Pratt less harshly. The General Counsel points to the one partner who was discharged after they called out or went home early 30 percent of their shifts, and another who received a written warning for displaying irregular time and attendance for 38 percent of their shifts. When examining attendance, the Partner Guide

states that if a partner is tardy, absent, or having partners cover 25 percent of their shifts in a 6-week time frame, management is to meet with the employees and, if appropriate, issue coaching or discipline. The policy, however, is not limited to those situations and will depend on the circumstances. Clark was issued a final written warning following a no-call, no show that caused the store to close early. Conversely, Cadotte was issued a written warning when he was no-call, no-show for two consecutive shifts and then reported being sick.

As Kieft indicated in Pratt's final warning, and Runyon stated in Pratt's discharge meeting, Respondent took the actions it did because Pratt was not only late, but he failed to call in, failed to notify management as to his whereabouts, and then showed up late on days where he was the opening SSV on duty. His late arrivals and failure to communicate affected the work of other partners and the operation of the store. In one instance, it caused the store to open late. There is no evidence these others held the same position, or, except for Clarke, that their attendance directly affected other employees or the operation of the store.

Based on the record, I conclude the General Counsel has failed to establish by a preponderance of the evidence that Pratt's protected activity was a substantial or motivating factor in his disciplinary warnings and discharge. I, therefore, recommend dismissing these allegations.

#### *F. Mendez' Final Written Warning*

Paragraph 9 of the complaint alleges Respondent discriminatorily disciplined Brian Mendez when it issued him a final written warning on December 5, 2022. Respondent defends that it lawfully issued Mendez the warning because he violated the Opening and Closing Safety Procedures requiring that he, as the closing SSV on duty, ensure all access points were securely locked before leaving the store, and the Starbucks Cash Handling Steps to Excellence policy to ensure the doors are locked while the safe is open and he was performing cash controlling duties.

To meet her burden under *Wright Line*, the General Counsel argues Mendez engaged in known activities to support the Union when he regularly wore a union pin to work, signed the "Dear Howard" letter, and called off and participated on the November 17 "Red Cup Day" strike outside the 5th & Oak store. The General Counsel argues discriminatory motive should be inferred from the timing of the discipline, particularly in relation to his participation in the strike. She also argues animus based on Respondent's failure to conduct a thorough investigation by the manner in which SM Carlin questioned Mendez, simply asking him if something "weird" occurred on the night the door was left unlocked, failing to give him the opportunity to view the surveillance video and respond to the allegations.

As for timing, Respondent did not learn of the violations until November 17, which happened on the same day as the Red Cup Day Rebellion strike. Although Carlin did not show Mendez the

<sup>39</sup> The General Counsel also argues animus should be inferred from Kieft's "shifted positions" regarding Pratt's November 2021 documented coaching for violating the Attendance and Punctuality policy at his prior store. When Pratt spoke with Kieft in January or February, Kieft indicated there was nothing in Pratt's file about the prior coaching. But when he issued the August 6 warning, he stated the coaching was always in Pratt's file. I decline to infer animus based on Kieft's statements.

Kieft exhibited no animus toward Pratt. On the contrary, he repeatedly attempted to coach Pratt rather than discipline him. For example, when Pratt was late on July 4, Kieft responded to Pratt not to let it happen again. When Pratt was late the following day, Kieft met and discussed steps Pratt could take to prevent further occurrences. It was only after the July 22 late arrival, which was significant, that Kieft issued Pratt the warning.

video, she explained that the front door was left open, including while he was performing the cash controller duties, and she gave him an opportunity to explain and provide a statement. The General Counsel also fails to explain how showing Mendez the surveillance video would have changed the outcome. At the hearing, after Mendez was shown the hearing, he acknowledged seeing that Castleberry forgot to relock the front door, and that neither he nor Castleberry checked to ensure that front door was locked before leaving for the night.

The General Counsel next argues the surveillance video shows Mendez closed the door to the safe before Castleberry opened the front door to let Elason back in, and the safe was not reopened after that time. Thus, the General Counsel argues based on the 2-second difference that it is not true that the front door was left unlocked while the safe was open. Respondent's policy requires the cash controller "ensure the store is locked and secured (i.e., no one enters or leaves the store) while [c]ash [c]ontroller activities are performed." Mendez did not ensure the store was locked and secure because, as he testified, he was looking down at the till and the safe and not paying attention to Castleberry when he opened the door for Elason, which is also why Mendez did not see that Castleberry failed to relock the door after letting Elason back in from his break.

The General Counsel also argues Respondent's concerns about unsecured cash handling are belied by the prior incidents of people forcefully pushing the front door open when locked, requiring multiple trips by the locksmith. However, when Mendez raised this exact excuse with Carlin on November 22, Carlin went over to the locked front door and tried to force it open, and it did not open.

Based on Mendez' admission that on the evening of November 16 he was not paying attention to the door when performing his cash-controlling duties, and did not check to make sure the front door was locked before leaving at the end of the night, I conclude the General Counsel has failed to establish Mendez' final warning was discriminatorily motivated. Assuming arguing that she had, Respondent has established it would have issued him the final warning regardless of his protected activity. As discussed, Respondent disciplined Thornton for the same offense in September 2021, months prior to any organizing or union activities. As a result, I recommend dismissing this allegation.

#### G. Disparate Enforcement and Flores Written Warning

Paragraph 10 of the complaint alleges that beginning on about December 8, 2022, Respondent, selectively and disparately enforced its Register Operation Customer Transactions policy more strictly against employees at its Macadam Avenue store who supported the Union; and on or about December 16, 2022, when it issued Alicia Flores a written warning as part of its selective and disparate enforcement of that policy because she supported the Union. It is well established that an employer may not selectively or disparately enforce a policy because employees engaged in protected or union activities. See generally, *Stabilus, Inc.*, 355 NLRB 836, 839 (2010); *Waste Management of Arizona*, 345 NLRB 1339 (2005); and *Seton Co.*, 332 NLRB 979, 992 (2000)

In her brief, the General Counsel addresses both of the

allegations as one. She contends Flores engaged in protected activity known to Respondent, including openly distributing union resources to coworkers, wearing a union button on her apron at work starting in March 2022, and signing the undated "Dear Howard" letter sent to Respondent announcing that partners at the Macadam Avenue store intended to unionize. Four months after the Union was certified, SM Clenaghan issued Flores a final written warning for violating the above policy when she rang up her coworker Anthony's free food and beverage items, which were then given to his girlfriend.

The General Counsel acknowledges Respondent maintained the policies in its Partner Guide prohibiting employees from giving away their free food and beverage items to others and holding employees responsible for each transaction conducted at their assigned cash register, but she argues there is no evidence either was enforced at the Macadam Avenue store until after the union organizing effort. The General Counsel relies upon the instance in which SM Clenaghan asked Flores to mark-out a coffee beverage she planned to take and give to her daughter, without any repercussions, as evidence of Respondent's selective or disparate enforcement of its free food and beverage policies.

The General Counsel argues Respondent's stricter enforcement of those policies against Flores was in retaliation for protected union activities, in violation of Section 8(a)(3) and (1). For support, she cites to *St. Johns Community Services of New Jersey*, 355 NLRB 414 (2010), and *Dynamics Corp. of America*, 286 NLRB 920, 921 (1987), enfd. 928 F.2d 609 (2nd Cir. 1991). In *St. Johns Community Services*, the Board held an employer selectively and disparately enforced its medication administration policy during an organizing effort to discharge a union supporter for violating the policy one time. The policy provided for termination after the second violation, and the employer's established practice had been to issue written warnings for first and even second violations. The Board held the employer's stricter enforcement was discriminatorily motivated. Similarly, in *Dynamics Corp.*, the Board found an employer discriminatorily enforced its punctuality and attendance policy in response to an organizing effort. In that case, there were several unexplained changes to the employer's established practice as to when and how supervisors would notify and address occurrences with employees, and those changes were more likely to be applied to union supporters than non-supporters.

Unlike these cases, there is no evidence of stricter or even changed enforcement. There are no prior situations in which a partner knowingly violated the Register Operation Customer Transactions policy. Flores testified she and others routinely entered transactions for free food or beverage items for their coworkers without inquiring into who they were for. The difference, though, is that Flores knew that Anthony, who had just clocked in and was beginning to work, could not have been ordering the items for himself.

I also find General Counsel's reliance on Clenaghan to prove disparate enforcement is misplaced. The Free Food Item and Beverages While Working policy allows a partner to consume "one [free] food item and any coffee, tea or blended beverages while on break during the partner's scheduled shift or during the 30 minutes prior to or after the partner's scheduled shift." Those items cannot be shared with anyone else. On the other hand, the

Weekly Partner Markout policy affords a partner one “[free] coffee or tea item ... each week ... The intent of this benefit is to provide partners with the opportunity to explore the many coffees and teas offered, as well as introduce these products to friends *and* family ...” It is true Clenaghan did not specify under which policy she was using her free coffee drink for her daughter, but the latter policy would have permitted it. What Anthony did—and what Flores facilitated by ringing the transaction up on her register—was not permissible under either policy, because while the Weekly Partner Markout policy allows for a free coffee beverage for a friend or family member, it does not allow for free food items.

Based on the foregoing, I conclude the General Counsel has failed to establish either of the alleged violations. I, therefore, recommend that they be dismissed.

#### IV. 8(A)(5) ALLEGATION

Paragraph 12 of the complaint alleges Respondent violated Section 8(a)(5) and (1) starting in around mid-August 2022, when it unilaterally began enforcing its previously unenforced Dress Code policy at its Jantzen Beach store without providing the Union with prior notice and an opportunity to bargain over the change and/or its effects; and on about September 6, 2022, when it issued employee Steven Sherman a documented coaching as a result of its changed enforcement of the policy.<sup>40</sup>

Section 8(a)(5) requires that an employer provide the employees’ representative with prior notice and an opportunity to bargain before making a unilateral change to any mandatory subject of bargaining, such as wages, hours, or other terms and conditions of employment. *NLRB v. Katz*, 369 U.S. 736, 743 (1962). To trigger the duty to bargain, the change must be material, substantial, and significant. *Crittendon Hospital*, 342 NLRB 686 (2004). The Board has held a change in whether and how an employer disciplines employees under a pre-existing rule or policy triggers the duty to bargain because it affects the employees’ terms and conditions of employment. See *Vanguard Fire & Supply Co.*, 345 NLRB 1016 (2005); *Toledo Blade Co., Inc.*, 343 NLRB 385 (2004); *Flambeau Airmold Corp.*, 334 NLRB 165 (2001); *Hyatt Regency Memphis*, 296 NLRB 259, 264 (1989), *enfd.* 939 F.2d 361, 371–373 (6th Cir. 1991); and *Celotex Corp.*, 259 NLRB 1186, 1193–1194 (1982). Discipline imposed

<sup>40</sup> There is no allegation the discipline to Sherman was discriminatorily motivated, in violation of Sec. 8(a)(3).

<sup>41</sup> Respondent and the General Counsel both rely on Long’s testimony about whether partners who violated the Dress Code policy ever received documented coaching. Long testified that “[i]f things needed to be escalated, then it was documented if it was more than once or twice or three times.” Respondent argues from this that Long issued a documented coaching to a partner after speaking with them several times about violating the Dress Code policy and seeing no sign of improvement, which is consistent with what Mackintosh did with Sherman. The General Counsel, on the other hand, interprets Long’s response that she only verbally coached partners, even if they violated the policy up to 3 times. I decline to draw either conclusion from Long’s response. She testified about specific instances where partners violated the policy, but she did not describe any instances in which a partner violated the policy multiple times.

<sup>42</sup> The General Counsel does not present any argument in support of the complaint allegation that Respondent made a unilateral change

pursuant to an unlawful unilateral change also violates Section 8(a)(5) and (1). See *Consec Security*, 328 NLRB 1201 (1999); *Great Western Produce, Inc.*, 299 NLRB 1004 (1990), reversed on other grounds *Anheuser Busch, Inc.*, 351 NLRB 644 (2007).

The General Counsel argues that while Respondent’s Dress Code policy existed well prior to the Union’s election at the Jantzen Beach store, Respondent never before issued a partner a documented coaching or written discipline for violating it. SM Long verbally coached partners about the policy and would send them home if they could not comply,<sup>41</sup> but Sherman was the first partner at the store to receive a documented coaching. The General Counsel argues this stricter enforcement constitutes a material, substantial, and significant change, and Respondent failed to provide the Union with prior notice and an opportunity to bargain over it or the discipline issued to Sherman, in violation of Section 8(a)(5) and (1).<sup>42</sup> I agree.

I credit that Sherman wore the same type of non-complying clothing, hats, and jewelry to work throughout his employment with Respondent.<sup>43</sup> He began working in November 2021, and he worked 25 to 30 hours a week. Nothing was said to him. Then SM Mackintosh told him on two consecutive days in early September 2022 that he was not in compliance with the Dress Code policy, and then she issued him the documented coaching a day or so later.<sup>44</sup>

Respondent argues that any change in enforcement of the Dress Code policy was the result of the change in SMs from Long to Mackintosh. I reject this argument. Mackintosh took over for Long as SM in early June 2022. She, therefore, was the SM and regularly saw Sherman out of compliance for nearly three months before saying anything to him. Respondent offered no explanation for this.

Respondent also argues enforcement of the Dress Code policy was discretionary, and under *Care One*, 369 NLRB No. 109, slip op. 2 (2020), it had no obligation to bargain with the Union before imposing discretionary discipline pursuant to that policy. While under current Board law, an employer is not required to bargain over discretionary discipline exercised in accordance with its established past practice, Respondent’s past practice was to issue verbal coaching—not written coaching or discipline—for violations of the policy. As the Board noted in *Care One*, “the correct analysis under *Katz* must focus on whether an

regarding the Dress Code policy beginning in mid-August 2022. In early August 2022, SM Mackintosh told Peterson to wear an apron while she was cleaning the bathroom. Peterson stated that was not her understanding of the policy, and Mackintosh then agreed. Peterson had on a Union T-shirt at the time. It is unclear how this constitutes a unilateral change.

<sup>43</sup> The surveillance video from the evening of June 9, 2022, which Respondent reviewed when it made the decision to discipline Trey Hawthorne and Chloe Peterson, shows Sherman wearing a sweatshirt with non-Starbucks logo, a hat, and a gold chain necklace outside of his clothing, all while working (albeit after the store had closed for the evening).

<sup>44</sup> Respondent appears to argue as a defense that the alleged change in enforcement is not a unilateral change because it only affected Sherman. The Board has held it is immaterial that the impact was limited to one or even a few employees because drawing such a distinction would allow an employer to escape its bargaining obligation by making a series of unilateral changes. See *Bloomfield Health Care Center*, 352 NLRB 252, 256 (2008) (citing to *Carpenters Local 1031*, 321 NLRB 30, 32 (1996)

employer's individual disciplinary action is similar in kind and degree to what the employer did in the past within the structure of established policy or practice." *Id.* slip op. at 5. Cf. *Wendt Corp.*, 372 NLRB No. 135 (2023) (overruling *Raytheon Network Centric Systems* insofar as it held an employer may lawfully make a unilateral change in terms and conditions of employment informed by discretion, so long as the change is similar in kind and degree to the changes made in connection with the employer's past practice of such changes). The discipline applied to Sherman was neither similar in kind nor degree to how the Respondent previously treated policy violations.

Based on the foregoing, I conclude Respondent made a material, substantial, and significant change to a mandatory subject of bargaining when it more strictly enforced the Dress Code policy to issue Sherman the September 6 documented coaching. I, therefore, recommend finding a violation of Section 8(a)(5) and (1) over that change and resulting discipline.

#### CONCLUSIONS OF LAW

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

2. 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.

3. Respondent violated Section 8(a)(3) and (1) of the Act by issuing final written warnings to Trey Hawthorne and Chloe Peterson.

4. Respondent violated Section 8(a)(5) and (1) of the Act when it failed or refused to bargain with the Union prior to more strictly enforcing its Dress Code policy including by issuing a documented coaching to Steve Sherman.

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

The Act has not been violated in any other way.

#### REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action, as further set forth in the Order below, designed to effectuate the Act. Respondent shall be required to remove from its files any reference to the unlawful disciplines issued to Trey Hawthorne, Chloe Peterson, and Steve Sherman, and notify them and the Regional Director for Region 19, in writing, that this has been done and that the unlawful disciplines will not be used against them in any way. The Respondent shall also be required to post the attached notice in accordance with *J.*

<sup>45</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.

<sup>46</sup> If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees

*Picini Flooring*, 356 NLRB 11 (2010).

In the complaint, and in brief, the General Counsel seeks a variety of special remedies, including a notice reading, letters of apology, training for Respondent's managers and supervisors about Section 7 rights, and an extension of the bargaining obligation under *Mar-Jac Poultry*, 136 NLRB 785 (1962). However, the General Counsel has not included factual arguments as to why these additional remedies are appropriate in these cases. She simply provides citations to cases where such remedies have been awarded. Accordingly, without more, I find the General Counsel has not shown that the Board's standard remedies are insufficient to remedy the unfair labor practices found herein.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended.<sup>45</sup>

#### ORDER

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

1. Cease and desist from:

a. Disciplining or otherwise discriminating against employees due to their or other employees' protected concerted activities and/or union sympathies.

b. Implementing unilateral changes to mandatory subjects of bargaining by more strictly enforcing the Dress Code policy to issue partners documented coaching or other written discipline without providing the Union with prior notice and an opportunity to bargain.

c. In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

a. Within 14 days from the date of this Order, remove from its files any references to the unlawful disciplines issued to Trey Hawthorne, Chloe Peterson, and Steve Sherman, and within three days thereafter, notify them in writing that this has been done and that the unlawful disciplines will not be used against him in any way.

b. Within 14 days after service by the Region, post at its Jantzen Beach store copies of the attached notice marked "Appendix."<sup>46</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices,

due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

notices shall be distributed electronically, such as by email, text message, group chat, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the Jantzen Beach store at any time since June 9, 2022.

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

Dated Washington, D.C., January 4, 2024

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT discipline or otherwise discriminate against employees due to their or other employees' protected concerted activities and/or union sympathies.

WE WILL NOT fail or refuse to bargain with the Workers United Labor Union International, affiliated with Service Employees International Union (Union) over changes affecting the wages,

hours and other terms and conditions of employment of the bargaining unit employees working at the Jantzen Beach store, including over the enforcement of the Dress Code policy.

WE WILL NOT unilaterally change our enforcement of the Dress Code policy to more strictly enforce it to begin issuing documented coaching or other written discipline without providing the Union with prior notice and an opportunity to bargain over those changes and/or their effects.

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

WE WILL bargain with the Union over changes affecting the wages, hours and other terms and conditions of employment of the bargaining unit employees working at the Jantzen Beach store, including over the enforcement of the Dress Code policy.

WE WILL rescind the final written warnings issued to Chloe Peterson and Trey Hawthorne and the documented coaching issued to Steven Sherman.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful final written warnings issued to Peterson and Hawthorne and the unlawful documented coaching issued to Steven Sherman, and WE WILL, within 3 days thereafter, notify each in writing that this has been done and the unlawful discipline will not be used against them in any way.

STARBUCKS CORPORATION LLC

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/19-CA-2957088> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

