**Starbucks Corporation *and* Workers United Labor Union International, Affiliated with Service Employees International Union.** Case 19–CA–295850

August 5, 2026

DECISION AND ORDER[1]

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On May 31, 2023, Administrative Law Judge Amita Baman Tracy issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party Union each filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.

The complaint in this case alleges that the Respondent interfered with, restrained, and coerced employees in violation of Section 8(a)(1) by communicating to them that, if they worked at a store where the Union was certified as their collective-bargaining representative, they would not be permitted to pick up shifts at other of the Respondent's stores where the Union was not the employees' certified representative, and vice versa. The judge found that the General Counsel satisfied her burden of proving that the Respondent unlawfully coerced its employees. For the reasons that follow, we find that the General Counsel did not satisfy her burden, and we dismiss the complaint.

I. BACKGROUND

The Respondent operates a large number of cafes around the country, including in the Seattle, Washington area. The Respondent's employees each have a designated "home store." Because the Respondent's employees are typically scheduled for fewer than 40 hours per week at their home store, the Respondent has permitted them to "borrow" (i.e., pick up) shifts at other of its stores to augment their hours and income. Borrowing hours is an employee-driven process, and store managers may not reject or deny a borrowed partner in their store except due to local scheduling laws. There are a variety of means by which employees can learn that specific shifts are available to be borrowed. They include managerial solicitation, word-of-mouth, email, or a Starbucks Facebook page where borrowable shifts are posted. Additionally, in January 2022, the Respondent created "Shift Marketplace," a platform enabling employees to borrow shifts online. During the rollout of Shift Marketplace in early February 2022, the Respondent trained its employees on how to use the online platform and provided them with a Quick Reference Guide. Neither that Quick Reference Guide nor a Launch Guide given to managers contained any limitation on borrowing based on the unionized status of an employee's home store. No such restriction appears anywhere in the Respondent's guidance documents.

Employee Alejandra Toscano worked as a barista at multiple Starbucks locations in Seattle from April 2019 to December 2022. Between February 2021 and July 17, 2022, Toscano's home store was located at 9999 Holman Road NW (the Holman store). Toscano, like most of the Respondent's baristas, was typically not scheduled full-time at her home store, and she borrowed extra shifts at other Starbucks locations to supplement her income. By April 2022,[3] Toscano was working only between 12 and 18 hours per week at the Holman store. She then began borrowing shifts at 7100 E. Green Lake Drive North (the Green Lake store). She would usually work one or two shifts per week at the Green Lake store, and at a certain point she spent more time there than at the Holman store.

On February 24, the Union filed a petition for an election to represent employees at the Holman store. On April 29, workers at that location voted in favor of unionization and a certification of representation was issued on May 9. The Green Lake store, where Toscano had been borrowing shifts, was not unionized.

On or about May 15, Toscano borrowed a shift at the Green Lake store and had a conversation there with several coworkers. No supervisors or managers were present. The coworkers told Toscano that they were sad that she would no longer be able to borrow hours at the Green Lake store. When Toscano asked them what they meant, they replied that because her home store was unionized, she would not be able to keep borrowing shifts at a nonunion-

[1] The Respondent asserts that Member Prouty should recuse himself claiming that his "past, present, and perceived relationships with the Service Employees International Union (SEIU) . . . SEIU Local Unions, and their affiliates, including Workers United" create a conflict of interest. Member Prouty has determined, in consultation with the Board's Designated Agency Ethics Official, that there is no basis to recuse himself from the adjudication of this case.

[2] The Respondent has 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.

[3] All subsequent dates are in 2022, unless otherwise specified.

ized location. Toscano immediately told them their assertion "was incorrect."

Later that day, after finishing her shift, Toscano initiated a conversation with Green Lake Manager Chelsea Zapata in the back room of the store. Toscano asked Zapata "what was up with the claims" of her coworkers about limitations on borrowing shifts? Zapata responded that "she had recently gone to a meeting with other managers in the area and Starbucks lawyers[,] and they told her that . . . unionized stores could not borrow at nonunionized stores, and vice versa." In reply, Toscano told Manager Zapata that this was incorrect. Manager Zapata said that she (Zapata) "didn't know exactly what was true" given that Toscano had continued to borrow shifts at Green Lake after that meeting. Toscano again insisted that any such limitation was "not true." Toscano testified that "I was very upset and I was swearing and I was—I said that sounds like some bullshit union busting, is what I told her." Manager Zapata concluded the conversation by telling Toscano that she "didn't see any problem with such borrowing" and assured Toscano that she could continue borrowing at the Green Lake store until Zapata found out more information.

Several days later, Toscano sent Zapata a text message about their earlier conversation. The entirety of their text correspondence is as follows:

> [Toscano:] I just wanted to confirm that you told me I can no longer cover shifts at Green Lake because Holman Road is unionized when we spoke on Wednesday. I think that under federal labor law I am able to continue borrowing shifts and I would like to be able to continue borrowing shifts at Green Lake.
>
> [Zapata:] I said that's what I heard/read at a union seminar but that doesn't mean I truly know.
>
> [Zapata:] I only brought it up because you commented on possibly wanting to work at both stores and I wanted to prepare you in case that was true.
>
> [Zapata:] You are always welcome at Green Lake.
>
> [Toscano:] Okay cool lol.
>
> [Toscano:] Sorry to text you on your day off btw.

Consistent with Manager Zapata's assurances in the initial conversation and with her text message that Toscano was "always welcome at Green Lake," Toscano continued freely borrowing shifts at the nonunion Green Lake store while her home store, Holman, was unionized. The record also establishes that employees from nonunion home stores continued to borrow shifts at unionized home stores. Consistent with the practice of free borrowing, around May 26, Toscano observed a flyer posted at the nonunion Green Lake store asking for help filling shifts at the unionized Holman store. At no point did the Respondent update any guidance document to restrict unionized employees from borrowing shifts at unrepresented stores or to restrict unrepresented employees from borrowing shifts at unionized stores.

On July 17, Toscano permanently transferred to the Green Lake store because that location had consistently offered her more hours. Toscano remained employed at the Green Lake store until she resigned in December.

The judge found that the Respondent had violated Section 8(a)(1) because "a reasonable employee would understand Zapata's unrefuted comments to Toscano about limitations on borrowing partners based on union status as a threat to lose an existing benefit."

## II. ANALYSIS

Section 8(a)(1) of the Act makes it unlawful for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [S]ection 7." As we recently explained:

> The Board has long held that the standard to be used in analyzing statements alleged to violate Section 8(a)(1) is whether they have a reasonable tendency to coerce employees in the exercise of their Section 7 rights. Intent is immaterial. The Board considers the totality of circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. Whether or not the employee changed their behavior in response is not dispositive, nor is the employee's subjective interpretation of the statement. The Board therefore considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees' free exercise of their rights under the Act.

*Lush Cosmetics, LLC*, 372 NLRB No. 54, slip op. at 3 (2023) (quotation marks and citations omitted).

Applying these principles, we find, contrary to the judge, that Manager Zapata did not threaten to eliminate an existing benefit based on employees' union activities and that Zapata's comments did not have a reasonable tendency to coerce employees in the exercise of Section 7 rights. To begin, Zapata's remarks to Toscano must be considered in context. Pertinently, the record here does not indicate any effort by the Respondent to restrict employees from borrowing shifts. Indeed, the Respondent created "Shift Marketplace" as a tool to assist employees in borrowing shifts at other stores and provided employees and managers with training and guidance materials on the tool. Those training materials do not limit shift borrowing based on the unionized status of an employee's home store. Rather, as the record here amply demonstrates, the Respondent permitted shift borrowing between the Holman and Green Lake stores both before and after the Holman store unionized.

Zapata's allegedly unlawful remarks occurred shortly after the Holman Store unionized. Initially, Toscano was told by other employees at the Green Lake store that she would no longer be able to borrow shifts at Green Lake because the Holman store had unionized. Presented with this rumor, Toscano sought out Zapata to ask about her coworkers' claims. In response, Zapata did not announce the implementation (or impending implementation) of a new prohibition on unionized employees borrowing shifts at nonunion stores or vice versa. Rather, Zapata equivocally described a statement that she had heard at a managers' meeting that "unionized stores could not borrow at nonunionized stores, and vice versa," but immediately acknowledged that "she didn't know exactly what was true," pointed out that Toscano had in fact continued to borrow shifts at a nonunion store, stated that she "didn't see any problem with such borrowing," *and affirmatively asserted that Toscano could continue doing so*. Employee Toscano had just completed a shift she had borrowed at a nonunion store when this conversation occurred, thereby undermining the veracity of the rumor being discussed between Zapata and Toscano. In a subsequent text exchange also initiated by Toscano, Zapata reiterated that she did not "truly know" if any shift borrowing restrictions were in place and assured Toscano about her ability to borrow shifts at the Green Lake store. That assurance was reinforced when Toscano continued to pick up shifts at Green Lake, and the Respondent subsequently approved Toscano's transfer from Holman to Green Lake notwithstanding her assertion that any restriction on shift borrowing would have been "bullshit union busting."

An employee could not reasonably interpret Zapata's equivocal comment, followed as it was by an assurance of continued borrowing, as an unlawful threat to eliminate an existing benefit. This is especially true in a context where employees had earlier in the year received training on Shift Marketplace without any reference to such a restriction, no corporate update had been given, and Zapata, a low-level manager, did not affirmatively issue a restriction on shift borrowing, but rather equivocally and hesitantly responded to an employee inquiry on the topic. Considering all of the circumstances, including Zapata's repeated assurances that Toscano could continue borrowing shifts at the Green Lake store and was "always welcome" there, we find that her comments lacked a reasonable tendency to interfere with protected activity. See *The Singer Co.*, 199 NLRB 1195, 1209 (1972) (dismissing the allegation of a plant-closure threat based on the manager's equivocal statement), enfd. 480 F.2d 269 (10th Cir. 1973).[4]

ORDER

The complaint is dismissed.

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

[4] Our dissenting colleague relies upon distinguishable cases in support of his position that, under all the circumstances, Manager Zapata's equivocal comments and continued commitment to permit borrowing were unlawfully coercive. None of the precedents cited by the dissent involved an employee-initiated conversation outside the context of an organizing drive or a manager's equivocal statement about what she had heard coupled with a commitment to continue the status quo. See *Daikichi Sushi*, 335 NLRB 622, 623–624 (2001) (finding employer, during union campaign, unlawfully predicted that it might close its operation if employees were to unionize because the union's demands would increase production costs), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); *Holy Cross Health d/b/a Holy Cross Hospital*, 370 NLRB No. 16, slip op. at 1 fn. 3 (2020) (finding that an employer unlawfully threatened an employee during an organizing drive by telling her that, if employees were to unionize, the employer's leave policies might become less generous and its shift scheduling less flexible without explaining that any changes would have to be collectively bargained); *Metro One Loss Prevention Services Group*, 356 NLRB 89, 89–90 (2010) (finding that employer unlawfully threatened employees during an organizing drive by stating that they need to be grateful for their tenure and pay and "[i]t could be worse; it could get much worse in the event the [u]nion comes in").

We are also unpersuaded by our dissenting colleague's reliance on other cases where the Board found that the Respondent made unlawful remarks at other locations around the country regarding the borrowing process. There is no evidence that employee Toscano was aware of those unlawful remarks made at other locations, and hence the record lacks a basis to rely on that context. Additionally, we find the facts presented in those cases are distinguishable. See *Starbucks Corp.*, 373 NLRB No. 90, slip op. at 3 (2024) (finding that employer unlawfully threatened an employee during an organizing drive by stating, unprompted, that "unionization would mean that nonunion stores would no longer be able to 'borrow' employees from union stores, and vice versa" because it was not phrased as a possible outcome of bargaining, but rather as an "inevitability"); *Starbucks Corp.*, 373 NLRB No. 45, slip op. at 1 fn. 2, 8, 11 (2024) (finding that employer unlawfully threatened employee during an organizing drive by stating, unprompted, that unionization might affect their ability to take shifts from other stores); *Starbucks Corp.*, 373 NLRB No. 44, slip op. at 8–9 (2024) (finding that employer unlawfully threatened employees during organizing drive by initiating a conversation and stating that "if they chose to vote yes on a union that their insurance would probably get worse, they would likely not be able to accrue any more paid time off, it would be unlikely they would be able to pick up shifts at other locations and it would be unlikely that store managers would be allowed to help them on the floor in times that they were short staffed"). None of these precedents involved an employee-initiated conversation outside the context of an organizing drive or a manager's equivocal statement about what she thought she had heard coupled with a commitment to continue the status quo.

Further, our dissenting colleague states that "the failure to carry out [a] threat does not detract from the reasonable likelihood of [a] naked threat to coerce. A threat is independently unlawful regardless of whether it is actually carried out." We do not hold otherwise. Rather, we find that the equivocal statement made by Manager Zapata, accompanied by her expressed uncertainty about the policy and her expressed commitment to continue borrowing, did not constitute a threat to adversely change the borrowing policy.

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

Contrary to my colleagues, I would affirm the judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening employees when Chelsea Zapata, a manager at one of the Respondent's nonunionized stores (the Green Lake store), told Alejandro Toscano, an employee at one of the Respondent's newly unionized stores (the Holman Store), that Zapata had been informed at a recent meeting with the Respondent's lawyers that employees from unionized stores would not be able to "borrow" shifts (i.e., pick up extra shifts) at nonunionized stores and vice versa.

Toscano, like most of the Respondent's baristas, was typically not scheduled full-time at the Holman store and needed to borrow shifts at other Starbucks locations to supplement her income. In April 2022,[1] Toscano's hours at the Holman store were reduced to between approximately 12 and 18 hours per week. As a result of the reduction in hours, Toscano began borrowing shifts at the Green Lake store. She would usually work one or two shifts per week at the Green Lake store, and at times she spent more time there than at the Holman store. The union election at the Holman store took place on April 29 and a certification of representative was issued on May 9.

In mid-May, after hearing rumors that employees at unionized stores would not be permitted to continue borrowing from nonunionized stores, Toscano asked Zapata about the rumors. Zapata advised Toscano that she recently attended a union seminar with other store managers and the Respondent's lawyers where the managers were told that "unionized and nonunionized stores could not borrow from one another." When challenged by Toscano, Zapata responded that she did not know what was true since borrowing currently existed. Zapata added that she did not see any problem with borrowing and that Toscano could continue to borrow from the Green Lake store "until [Zapata] found out more information." A few days later, Toscano reached out to Zapata for confirmation about borrowing at the Green Lake store, stating "I just wanted to confirm that you told me I can no longer cover shifts at [Green Lake] because Holman Road is unionized. . .I would like to be able to continue borrowing shifts at [Green Lake]." Zapata replied that, "I said that's what I heard/read at a union seminar but that doesn't mean I truly know," and that she "only brought it up because you commented on possibly wanting to work at both stores and I wanted to prepare you in case that was true." Zapata added, "[y]ou are always welcome at [Green Lake]." The General Counsel alleged and, as noted above, the judge found that Zapata impliedly threatened employees by telling them that employees whose home store is unionized could not borrow from a nonunionized store and vice versa.

As my colleagues note, the Board recently explained,

> The Board has long held that the standard to be used in analyzing statements alleged to violate Section 8(a)(1) is whether they have a reasonable tendency to coerce employees in the exercise of their Section 7 rights. Intent is immaterial. The Board considers the totality of circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. Whether or not the employee changed their behavior in response is not dispositive, nor is the employee's subjective interpretation of the statement. The Board therefore considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees' free exercise of their rights under the Act.

*Lush Cosmetics, LLC*, 372 NLRB No. 54, slip op. at 3 (2023) (quotation marks and citations omitted). Additionally, in considering the totality of the circumstances, the "threats in question need not be explicit if the language used by the employer or his representative can reasonably be construed as threatening." *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970). Tentative language about adverse consequences can be coercive, particularly where the employer's prediction is not based on objective facts or the nature of the collective bargaining process. *Daikichi Sushi*, 335 NLRB 622, 622–624 (2001) (holding that it was not a defense that an employer phrased its prediction that the plant could close if employees unionized "as a possibility rather than a certainty"), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003); see also *Holy Cross Hospital*, 370 NLRB No. 16, slip op. at 1 fn. 3 (2020) (finding that an employer unlawfully threatened that if employees unionized, the employer's policies might become less generous and its shift scheduling less flexible); *Metro One Loss Prevention Services Group*, 356 NLRB 89 (2010) (finding that an employer unlawfully threatened that an employee's pay rate "could" get worse if the union came

[1] All subsequent dates are in 2022.

in, without making any reference to the collective bargaining process).[2] Lastly, to determine whether an unlawful threat has been made, the Board considers "whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction." *Double D. Construction Group, Inc.*, 339 NLRB 303, 303–304 (2003).

Considering the totality of the circumstances, I would find that the Respondent violated Section 8(a)(1) when Zapata informed Toscano that she had been told at a recent meeting of the Respondent's lawyers and managers that employees from unionized stores would not be able to borrow shifts between nonunionized stores and vice versa. Such a policy, if implemented, would prevent employees from borrowing between the Holman store and the Green Lake store, contrary to an existing practice.[3] As the judge correctly found, based on the totality of the circumstances, a reasonable employee would interpret Zapata's statement as a threat to eliminate an existing term or condition of employment. The fact that Zapata's comment occurred only six days after the Holman store unionized heightens the coercive impact on employees. A reasonable employee in Toscano's shoes who heard that statement would be chilled from freely choosing to engage in union organizing activities at their home store and stores where they borrow shifts.

My colleagues begin their analysis by noting that, "Zapata's remarks to Toscano must be considered in context," and that, "[p]ertinently, the record here does not indicate any effort by the Respondent to restrict employees from borrowing shifts," a point they return to throughout their decision. However, the fact that the threat was not carried out is not pertinent, it is irrelevant. While evidence that an alleged threat was carried out certainly would corroborate that the allegedly threatening statement was made—an issue not in dispute here—the failure to carry out the threat does not detract from the reasonable likelihood of the naked threat to coerce. A threat is independently unlawful regardless of whether it is actually carried out.[4]

My colleagues also point to Zapata's uncertainty about what actions the Respondent was taking in regard to borrowing and to the fact that Zapata told Toscano that she could continue borrowing at the Green Lake store. In my opinion, the judge correctly found that the coerciveness of Zapata's statement was not eliminated when she indicated that she was unsure of the policy and was willing to allow Toscano to keep borrowing hours at the Green Lake store "until she found out more." An employee in Toscano's shoes would still reasonably fear that the restriction on borrowing could be implemented at any moment as there was never any further explanation from Zapata to Toscano, much less a retraction of the prospect that borrowing could be eliminated. In this regard, even though, in the text exchange initiated by Toscano a few days after their conversation, Zapata stated that Toscano was "always welcome at Green Lake," in that same exchange Zapata stated that she wanted to "prepare" Toscano "in case [it] was true" that borrowing between unionized and nonunionized stores would no longer be permitted.[6] Moreover, while Zapata "didn't know exactly what was true," she advised Toscano about information she learned at a managers' meeting with the Respondent's attorneys —individuals with, assumedly, more authority than Zapata and the other managers—who felt assured enough about this information to permit it to be relayed to the managers in attendance. Accordingly, I do not assign Zapata's lack of certainty and her assurances about borrow-

[2] My colleagues' attempt to distinguish these cases on their facts does not vitiate the principle for which I cite them: an employer's tentative or equivocal language about adverse consequences can be coercive, particularly where the employer's prediction is not based on objective facts or the nature of the collective-bargaining process. Additionally, my colleagues emphasize that these cases I cite do not involve "an employee-initiated conversation outside the context of an organizing drive or a manager's equivocal statement about what she had heard coupled with a commitment to continue the status quo." In my opinion, Zapata's statements can hardly be classified as a "commitment to the status quo" where the status quo would only last until she could "find out more information," indicating it was ultimately not up to her (a fact she recognized by explaining that she was seeking to "prepare" Toscano "in case [it] was true").

[3] The facts illustrate how significant borrowing was to employees and how concerned they were at the prospect of abruptly losing this vital benefit. As noted above, Toscano, like most of the Respondent's baristas in most of its stores, was not scheduled to work full-time at her home store; during the time period at issue here, she was working only 12 to 18 hours per week there and relied on borrowing shifts to supplement her income. Under the circumstances, as discussed below, employees would reasonably fear that a contemplated restriction on borrowing would significantly impact their livelihood, and Zapata's statement about that possibility would inhibit their willingness to engage in protected concerted activity at the Green Lake store (or elsewhere).

[4] My colleagues highlight the Respondent's development of a tool to assist employees with borrowing and related training on the tool for employees and managers that does not limit borrowing. In determining whether an employee would reasonably perceive a statement about restrictions on borrowing to be coercive, I do not find it compelling that the Respondent created a tool to assist with borrowing and provided training with no limitations on who can borrow as, if the threat were carried out, borrowing would still occur, and thus the tool would still be used, it would just be limited in use, contrary to past practice.

[6] Additionally, Zapata's "assurances" only extended to the Green Lake store and, significantly, Toscano borrowed shifts at more than one store.

I note that in arguing that Zapata assured Toscano that she could continue borrowing at the Green Lake store, my colleagues claim that "[t]hat assurance was reinforced when the Respondent subsequently approved Toscano's transfer from Holman to Green Lake" on July 17. The connection between the threat of loss of borrowing opportunities and a subsequent transfer sometime later is unclear to me at best, and I do not believe that Toscano's transfer should carry any weight in assessing whether an unlawful threat to discontinue borrowing was made two months earlier.

ing at the Green Lake store the same weight that my colleagues do.[7]

Finally, despite my colleagues' professed desire to consider Zapata's remarks to Toscano in context, I must note one element of context with which they fail to reckon: the rumors that Toscano heard that employees at unionized stores would not be permitted to continue borrowing shifts. The Board has already found that the Respondent violated the Act on multiple occasions, at multiple locations during this very same time period, by threatening to limit employee borrowing opportunities. See *Starbucks*, 373 NLRB No. 90, slip op. at 3 (2024) (finding that the Respondent violated Section 8(a)(1) in a Minneapolis store by, among other things, telling an employee on April 14, 2022, that unionization would mean that nonunionized stores would no longer be able to borrow employees from unionized stores and vice versa); *Starbucks*, 373 NLRB No. 45 (2024) (finding that the Respondent violated Section 8(a)(1) in a Mililani, Hawaii store on April 6, 2022, by, among other things, threatening employees with loss of benefits, including borrowing, if employees voted for the Union); *Starbucks*, 373 NLRB No. 44, fn. 3 (2024) (finding that, during a mid-March 2022 meeting, the Respondent unlawfully threatened employees at several Michigan stores with reduced benefits and hours, including borrowing, if they voted to unionize). Thus, at or around the same time that Zapata issued the threat (in response to a rumor Toscano heard from colleagues), the Respondent's managers were violating the Act by, among other things, making those same threats at locations across the country. The rumors Toscano heard provide context that adds to the coercive nature of the threat that the Respondent appears to have repeatedly made in the Spring of 2022.

Accordingly, I would affirm the judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening employees with the loss of an existing benefit.

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

______________________________________
David M. Prouty, Member

NATIONAL LABOR RELATIONS BOARD

*Alice J. Garfield, Esq.,* for the General Counsel.
*Ryan P. Hammond, Esq.* and *Nina Stroescu, Esq. (Littler Mendelson, PC),* for the Respondent.
*Ben Berger, Esq. (Barnard, Iglitzin & Lavitt LLP),* for the Charging Party.

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. A hearing was held in this matter in Seattle, Washington, on March 21, 2023. Workers United Labor Union International, affiliated with Service Employees International Union (Union or Charging Party) filed the charge and amended charge on May 13 and June 3, 2022.[1] The General Counsel, through the Regional Director for Region 19 of the National Labor Relations Board (the Board), issued a complaint and notice of hearing on December 9. Starbucks Corporation (Respondent or Starbucks) filed a timely answer to the complaint. The General Counsel amended the complaint, without objection, at the hearing.

The amended complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) when on or about May 15, Respondent by Store Manager Chelsea Zapata (Zapata):

> (1) impliedly threatened employees by telling them that, if they worked at a store where the Union was certified as their collective-bargaining representative, they would not
> (2) be permitted to work shifts at Respondent's stores where the Union was not the employees' certified collective-bargaining representative; and
> (3) impliedly threatened employees by telling them that, if they worked at a store where the Union was not the employees' certified collective-bargaining representative, they would not be able to work shifts at Respondent's stores where the Union was certified as the employees' collective-bargaining representative.

On the entire record,[2] including my observation of the demeanor of witnesses,[3] and after considering the briefs filed by the General Counsel, Respondent, and the Charging Party[4] I

[7] I find *The Singer Co.*, 199 NLRB 1195, 1209 (1972), cited by my colleagues, distinguishable. There, in a conversation with an employee who had asked if the employer would move the plant if the union came in, a manager replied that he had no way of knowing and added that having $5 million invested in a plant location was not enough to keep a company of that wealth tied to a specific plant. The Board found the manager's remarks "too equivocal" to warrant a finding of threat of plant closure. That is very different from the statement we have here—Zapata did not know exactly what would happen but was relaying to Toscana what she had been advised in her meeting with the Respondent's attorneys, while the manager in *The Singer Co.*, stated that he did not know and did not mention statements from management about relocation.

[1] All dates hereinafter are in 2022 unless otherwise noted.

[2] On April 17, 2023, the General Counsel filed an unopposed motion to correct the official transcript in this proceeding. I grant the General Counsel's motion, and the official transcript will be corrected as set forth in the General Counsel's unopposed motion.

[3] Although I have included several citations to the evidentiary record in this decision to highlight testimony or exhibits, I emphasize that my findings and conclusions are not based solely on those citations, but

make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent, a corporation with headquarters in Seattle, Washington, is engaged in the operation of over 17,000 restaurants selling food and beverages throughout the United States, including a store located at 7100 E. Green Lake Drive N., Seattle, Washington (the Green Lake store). During the past 12–month period, Respondent, in conducting its operation of restaurants, derived gross revenues in excess of $500,000, and sold and shipped from the State of Washington goods valued in excess of $50,000 directly to points outside the State of Washington. Accordingly, I find, and Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, Respondent admits, and I find, that the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *A. Unionization at Starbucks*

On February 24, the Union filed a petition with the Board to represent all full-time and regular part-time baristas, shift supervisors, and assistant store managers at Respondent's location at 9999 Holman Road, NW, Seattle, Washington 98117 (Holman Road store or store 3346) (Jt. Exh. 1). On March 14, and amended on March 16, Respondent and the Union entered into a stipulated election agreement with a mail ballot election where the eligible voters were full-time and regular part-time baristas and shift supervisors employed at the Holman Road store (Jt. Exh. 2 and 3). On May 9, the Regional Director of Region 19 certified the Union as the exclusive representative of the full-time and regular part-time baristas and shift supervisors employed at the Holman Road store (Jt. Exh. 4). In mid-September, the Holman Road store closed (Tr. 34–35).

#### *B. Borrowed Partners/Hours*

Typically, Respondent's employees, who are known as partners, are not scheduled for 40-hours per work week at their home store (the store in which they are hired). Thus, partners may "borrow hours" by working at other stores thereby increasing their weekly hours worked, their pay, and providing coverage to the location that needs shifts covered (Tr. 20, 85). Borrowing hours is a partner-driven process, and store managers may not reject or deny a borrowed partner in their store except due to local scheduling laws (Tr. 85–86; R. Exh. 4). The partners learn about available shifts at other locations by managerial solicitation, word of mouth, email, or a Facebook page (Tr. 21, 100, 117). If a partner is interested in covering a shift at another location, the partner informs their store manager who reaches out to the other location's store manager (Tr. 25–26, 101). Partners may also be contacted by shift supervisors from other locations who need shifts covered, and partners could inform shift supervisors of their availability and work those shifts (Tr. 26–27, 101). Furthermore, partners could also directly respond to Facebook posts requesting shift coverage (Tr. 27).

In January, Respondent created a program for borrowing partners, known as "Shift Marketplace," where partners may see online if there is a need for shift coverage at other locations and volunteer to cover the shifts (Tr. 44; R. Exh. 1 and 5). The partner guide and shift marketplace quick reference guide do not differentiate the ability to borrow hours based on whether the partner's home store is unionized or nonunionized (Tr. 100; R. Exh. 1 and 5). Since January, partners have not been limited to using Respondent's program when borrowing hours at other store locations.

#### *C. The Green Lake Store Manager's May Conversation with a Holman Road Barista*

Alejandra Toscano (Toscano), who worked for Respondent as a barista from April 4, 2019, to December 17, testified on behalf of the General Counsel. Toscano's home store was the Holman Road store from February 2021 to July 17 (Tr. 17–19). Toscano then transferred home stores to the Green Lake store until she resigned in December (Tr. 34). At the Holman Road store, Toscano worked on average 22 to 26 or 28 hours per week between January and March, but in mid-April, her work hours were reduced to 12 to 18 hours per week. Thus, in mid-April Toscano began borrowing hours at other locations, including the Green Lake store (store 389) (Tr. 22–23, 43, 50). Toscano continued to borrow hours at the Green Lake store until she transferred to that store on July 17 (Tr. 50). Until mid-September or October, the Green Lake store and Holman Road store were in one district which was overseen by District Manager Amber Molen (Molen)

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rather are based on my review of the entire record for this case. Furthermore, in evaluating witness' testimonies, I have considered the demeanor of the witnesses; the apparent interests of the witnesses; the inherent probabilities; corroboration or lack thereof; consistencies or inconsistencies within the testimony of the witnesses and between the witnesses when testifying about the same event. See, e.g., *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). Any testimony in contradiction to my findings has been considered but rejected. Additionally, it is well established that the trier of fact may believe some, but not all, of a witness's testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950).

Overall, there is little controversy in the witnesses' testimonies. Based on my observations and review of the record, I find that Alexandra Toscano (Toscano), the General Counsels' only witness, testified credibly as she was consistent with the documentary evidence. Toscano's testimony was not contested. As a result, I credit Toscano's testimony in its entirety. As for Amber Molen (Molen), Respondent's only witness, I find that she testified credibly and consistently with the documentary evidence. However, as discussed further, when she was asked fact questions about the union seminar management officials attended with attorneys, she did not testify credibly as to when the meeting occurred and whether a specific topic was discussed. This lack of credibility on that topic does not undermine my belief in the remainder of her uncontested testimony. Finally, Zapata did not testify as she no longer works for Respondent but her subsequent text messaging with Toscano corroborates Toscano's testimony as to their conversation.

[4] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "GC Br." for the General Counsel's Brief; "CP Br." for Charging Party's brief; and "R. Br." for Respondent's Brief.

(Tr. 84).[5]

In mid-May, while working at the nonunionized Green Lake store on borrowed hours and after the May 9 unionization of the Holman Road store, some Green Lake store baristas expressed feelings of sadness to Toscano because she would no longer be able to borrow hours at the Green Lake store due to unionization of her home store (Tr. 30).[6] Later that day, Toscano spoke to Green Lake Store Manager Zapata to learn "what was up with the claims" (Tr. 31).[7] Toscano testified that Zapata told her that she had recently been to a meeting with other store managers and Respondent's lawyers. Zapata said that during that meeting the store managers were told that unionized and nonunionized stores could not borrow from one another (Tr. 32–33). Toscano told Zapata that this information was incorrect (Tr. 32). Zapata responded that she did not know what was "true" since Toscano continued to borrow at the nonunionized Green Lake store (Tr. 32). Zapata told Toscano that she could continue to borrow at the Green Lake store as Zapata did not have any problem with her borrowing hours.

A few days later, Toscano sent a text message to Zapata regarding their conversation. Toscano wrote,

> I just wanted to confirm that you told me I can no longer cover shifts at Greenlake because Holman Road is unionized when we spoke on Wednesday. I think that under federal labor law I am able to continue borrowing shifts and I would like to be able to continue borrowing shifts at Greenlake.

Zapata responded in three messages,

> I said that's what I heard/read at a union seminar but that doesn't mean I truly know.[8]
>
> I only brought it up because you commented on possibly wanting to work at both stores and I wanted to prepare you in case that was true.
>
> You are always welcome at Greenlake.

Toscano responded, "Okay cool lol [laugh out loud]" (CP Exh. 1).

Even after this exchange between Zapata and Toscano about borrowing partners, the Holman Road store continued to seek out assistance to cover shifts from nonunionized stores. For example, on May 26, Cynthia Robinson (Robinson), who was the Holman Road store manager,[9] sent a district-wide email to the store managers asking for help to fill upcoming shifts at the Holman Road store. Robinson's email was printed out by Zapata and placed in the bathroom of the Green Lake store (GC Exh. 2; Tr. 21–22). Toscano saw this email when she was borrowing a shift at the Green Lake store (Tr. 58). Toscano testified that partners from the unionized Holman Road store, including herself, never stopped borrowing shifts at nonunionized stores (Tr. 59, 62–63).

## Legal Analysis

Section 7 of the Act provides that, "employees shall have the 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." Section 8(a)(1) provides that it is an unfair labor practice to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7. The Board has set forth an objective test to determine if "the employer engaged in conduct which would reasonably have a tendency to interfere with the free exercise of employee rights under the Act." *Santa Barbara News–Press*, 357 NLRB 452, 476 (2011); *Multi–Ad Services*, 331 NLRB 1226, 1227–1228 (2000). The test "does not turn on the employer's motive or on whether the coercion succeeded or failed." *American Tissue Corp.*, 336 NLRB 435, 441 (2001), citing *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946).

The Board's standard to determine whether an unlawful threat has been made is "whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction." *Double D. Construction Group, Inc.*, 339 NLRB 303, 303–304 (2003); *KSM Industries*, 331 NLRB 133 (2001); *Mediplex of Danbury*, 314 NLRB 470, 471 (1994). Furthermore, "the test is *not* the actual intent of the speaker or the actual effect on the listener." See *Smithers Tire*, 308 NLRB 72, 72 (1992). Thus, "the context in which the alleged threat was communicated is critical to determine how a reasonable employee could interpret the particular words spoken." *Cintas Corp. No. 2*, 372 NLRB No. 34, slip op. at 4 (2022).

The General Counsel alleges that on or about May 15, Zapata impliedly threatened partners by telling them that partners whose home store is a unionized store could not borrow hours from a nonunionized store, and partners whose home store is a

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[5] Respondent admits, and I find, that since May 16, Molen is a supervisor and/or agent under Sec. 2(11) and 2(13) of the Act.

[6] Toscano's testimony as to what the other baristas said to her is hearsay, and thus, I do not accept the testimony for its truthfulness. Instead, I accept this testimony only as Toscano's reason for speaking to the store manager thereafter which prompted the discussion about borrowing hours between unionized and nonunionized stores. See *Hebert Industrial Insulation Corp.*, 312 NLRB 602, 608 (1993).

[7] Respondent admits, and I find, that since May 16, Zapata is a supervisor and/or agent under Sec. 2(11) and 2(13) of the Act. Since October or November, Zapata no longer works for Respondent (Tr. 108, 118).

[8] Molen testified that the union seminar Zapata mentioned referred to a training between store managers and attorneys in early 2022, and that borrowing partners was not discussed (Tr. 120–121). I do not credit Molen's testimony as to when the seminar occurred and that borrowing partners was not discussed. While it may be true that a union seminar was held in early 2022, the context of the conversation between Zapata and Toscano indicates that the union seminar occurred closer in time to their mid-May conversation. Furthermore, Zapata, in her text message, does not mention that the union seminar occurred almost 5 months prior but writes as though she only recently learned this information. Instead, it is much more likely that Zapata attended a union seminar closer in time to mid-May when the representation election was held. Regardless of Molen's testimony, Zapata's text message corroborates Toscano's testimony that Zapata learned at a union seminar that borrowing hours between unionized and nonunionized stores may not be permitted.

[9] Respondent admits, and I find, that since May 16, Robinson is a supervisor and/or agent under Sec. 2(11) and 2(13) of the Act.

nonunionized store could not borrow from a unionized store. The General Counsel and Charging Party argues that Respondent impliedly threatened partners with the loss of a benefit because of their organizing (GC Br. at 8–9; CP Br. at 4–6). Respondent argues that objectively under the totality of the circumstances, Zapata did not threaten the partners with a loss of a benefit, and that Toscano only discussed possible limitations which did not occur (R. Br. at 6–9).

Here, considering the totality of the circumstances, a reasonable employee would understand Zapata's unrefuted statements to Toscano about limitations on borrowing partners based on union status as a threat to lose an existing benefit. Rather than deny the rumor, Zapata, instead confirmed that she had learned that borrowing would not take place between unionized and nonunionized store locations. This response came only a few days after the Holman Road store unionized. Zapata then said she was not sure what was true or happening but that she would continue to allow Toscano to borrow. Zapata implied that she would continue the status quo but that upper management and legal counsel may change the borrowing hours process based on union status. Even in her subsequent text message, Zapata sought to prepare Toscano to lose the benefit of borrowing hours from nonunionized stores. Zapata's comments were not based on objective facts or the process of labor contract negotiations. See *Holy Cross Hospital*, 370 NLRB No. 16, slip op. at 1 fn. 3 (2020) (employer unlawfully threatened that if employees unionized, the employer's leave policies might become less generous and its shift scheduling less flexible); *Metro One Loss Prevention Services Group*, 356 NLRB 89 (2010) (employer unlawfully threatened that an employee's pay rate could get worse if the union came in); compare *Jefferson Smurfit Corp.*, 325 NLRB 280, fn. 3 (1998) (employer's statement that benefits "could go either way as a result of collective bargaining" was lawful).

I disagree with Respondent's claim that because Toscano approached Zapata with the rumor that the conversation could not be considered a threat under the Act. On the contrary. Zapata could have denied the rumor, but instead repeated twice that she had been informed that the process of borrowing partners could change based on unionization status. In fact, Zapata wanted to "warn" Toscano in case she was prevented from borrowing hours in the future. The Board has held that a supervisor's threats - about union activity violate Section 8(a)(1) even if the speaker only intended to give the employee a "friendly warning." For example, in *Long Island College Hospital*, 327 NLRB 944, 945 (1999), the Board held "'friendly warnings' from supervisors to employees to 'watch your back,' 'keep a low profile' and similar advice to be unlawful." See also *Tecmec*, 306 NLRB 499, 504 (1992) ("[A] remark, made by a supervisor, about the reaction of a higher level supervisor, constitutes a coercive threat that interferes with employee Section 7 rights even if it is given in a 'friendly' manner."), enfd. 992 F.2d 1217 (6th Cir. 1993).

I also disagree with Respondent's argument that Zapata could not have threatened Toscano regarding borrowing partner since Toscano continued to be permitted to borrow hours at the nonunionized stores, and no store manager at Respondent's locations denied borrowed partners based on representation status. Respondent's argument misses the point. A reasonable employee, who uses Respondent's borrowed partner program, would consider Zapata's statement as a change that could occur at any time as a direct result of the decision to unionize. Without voting in favor for representation, a reasonable employee would know that borrowing partners would remain the same, but with representation, Respondent had changed or would be changing an economic benefit relied upon by partners. Even tentative language about adverse consequences can be coercive, especially where the employer's prediction is not based on objective fact or the nature of the collective-bargaining process. *Daikichi Sushi*, 335 NLRB at 623–624 (holding that it was not a defense that the employer phrased its prediction that the plant could close if employees unionized "as a possibility rather than a certainty"), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Thus, Respondent violated Section 8(a)(1) as alleged.

## CONCLUSIONS OF LAW

1. Respondent, Starbucks Corporation, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Charging Party, Workers United Labor Union International, affiliated with Service Employees International Union has been a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent committed unfair labor practices in violation of Section 8(a)(1) of the Act by on or about May 15:

   (a) impliedly threatened employees by telling them that, if they worked at a store where the Union was certified as their collective-bargaining representative, they would not be permitted to work shifts at Respondent's stores where the Union was not the employees' certified collective-bargaining representative; and
   (b) impliedly threatened employees by telling them that, if they worked at a store where the Union was not the employees' certified collective-bargaining representative, they would not be able to work shifts at Respondent's stores where the Union was certified as the employees' collective-bargaining representative.

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

## REMEDY

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

I will order that the employer post a notice at the facility in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010), and *Durham School Services*, 360 NLRB 694 (2014). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. Id. supra at 13.

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

ORDER

Respondent, Starbucks, Corporation, Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) impliedly threatening employees by telling them that, if they worked at a store where the Union was certified as their collective-bargaining representative, they would not be permitted to work shifts at Respondent's stores where the Union was not the employees' certified collective-bargaining representative; and

(b) impliedly threatening employees by telling them that, if they worked at a store where the Union was not the employees' certified collective-bargaining representative, they would not be able to work shifts at Respondent's stores where the Union was certified as the employees' collective-bargaining representative.

(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) Post at its store in Seattle, Washington, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent's authorized representative, shall be posted by 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, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If, during the pendency of these proceedings, Respondent has gone out of business or closed the store involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 15, 2022.

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

Dated, Washington, D.C. May 31, 2023

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 threaten you with loss of existing benefits of borrowing hours from store locations not represented by the Union if you chose to be represented by the Union.

WE WILL NOT threaten you with loss of existing benefits of borrowing hours from store locations represented by the Union if you work at store not represented by the Union.

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

STARBUCKS CORP. LLC

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 19-CA-295850 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

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

[11] If the facility is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means. *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68, slip op. 4 (2020).

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."