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Lancaster Coffee Co. & Café LLC and Samantha Godus. Case 03–CA–306479

September 30, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On February 26, 2024, Administrative Law Judge Michael A. Rosas issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The 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, and conclusions only to the extent consistent with this Decision and Order, and to adopt the recommended Order as modified and set forth in full below.¹

This case involves largely unexcepted-to findings that the Respondent violated the National Labor Relations Act by retaliating against its employees' protected concerted activity of withholding their labor and seeking a meeting with the Respondent's owner to discuss their concerns over working conditions. The judge found that rather than meeting with the group of employees, the Respondent violated the Act by, among other things, discharging them, removing them from the work schedule, and locking them out of the workplace. The judge, however, did not include employee Quinn Schuster in these violations because he found that Schuster had resigned. For the reasons set forth below, we find that the judge erred in excluding Schuster

from the relevant unfair labor practice findings and their associated remedies.²

Background

The Respondent is a small coffee shop and café owned by Tracy Diegelman in Lancaster, New York, with approximately a dozen employees. Samantha Godus and Quinn Schuster performed managerial duties, with Godus serving as a liaison between Diegelman and the employees.³ Throughout 2022,⁴ the Respondent's employees had numerous concerns about their working conditions. One issue was the inability to lock and unlock the door from inside the café; on one occasion, Godus and two other employees inadvertently locked themselves in the store. Other employee concerns included gas leaks, the presence of vermin, decreasing work hours, and inconsistent pay. On October 20, Godus met with Diegelman to explain the employees' concerns, but, following the meeting, the Respondent did not take any action to improve the employees' working conditions.

Thereafter, Godus invited employees to a barbecue at her home on October 28 for further discussion of the workplace issues. During the meeting, the employees agreed to communicate their concerns directly to Diegelman. As the employees explained what they wanted to say to Diegelman, Godus and Schuster drafted an email on their behalf, informing Diegelman that they would not appear for their shifts on October 29 "due to our desperation for a better work environment." The email listed their concerns and demands, expressed their willingness to return to work once these issues had been discussed, and proposed a meeting at the café on October 30 at 2:00 p.m. None of the employees who attended the barbecue reported for work on October 29 or 30.

Diegelman decided not to attend the October 30 meeting and did not respond to the employees' email. Instead, she asked her boyfriend, Frank Amodio, then unknown to

¹ We grant the Acting General Counsel's unopposed Motion to Withdraw Limited Exceptions, as the General Counsel no longer seeks certain remedies, consistent with GC Memorandum 25-05 (February 14, 2025). We also grant the General Counsel's exceptions 1, 2, and 12, and have made the requested corrections to the attached judge's decision.

² In the absence of exceptions, we adopt the judge's findings that the Respondent violated Sec. 8(a)(1) of the Act by discharging Samantha Godus, Alyssa Battenfield, and Reese Fiato in retaliation for their protected concerted activity; by physically restraining and assaulting Fiato; by installing a sign in the café which read "SMILE you're on CAMERA" and informing employees they were being recorded; by removing Godus, Battenfield, and Fiato from the work schedule and locking them out of the café; by threatening Godus, Battenfield, Fiato, and Quinn Schuster with trespassing charges and arrest if they returned to the café; and by refusing to allow Godus, Battenfield, Fiato, and Schuster onto its property.

We have amended the judge's conclusions of law consistent with our findings herein. We have amended the remedy to include Schuster in all

remedies awarded to Godus, Battenfield, and Fiato. We shall modify the judge's recommended Order to conform to our findings, to the Board's standard remedial language, and in accordance with our decision in *Vibe Consulting, LLC*, 374 NLRB No. 33 (2026), and we shall substitute a new notice to conform to the Order as modified and set forth in full below.

The judge ordered remedies consistent with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), vacated in part on other grounds 102 F.4th 727 (5th Cir. 2024). As fully explained in *Leo Marine Services, Inc.*, 375 NLRB No. 35, slip op. at 5 fn. 17 (2026), Chairman Murphy and Member Mayer agree to apply *Thryv* in this case for institutional reasons. Member Prouty continues to believe that *Thryv* was correctly decided, is well within the Board's remedial authority, and is necessary to satisfy the Board's statutory obligation to provide meaningful make-whole relief. See *Leo Marine*, supra at fn. 17.

³ No party contends that Godus or Schuster are supervisors within the meaning of Sec. 2(11) of the Act.

⁴ All dates are in 2022 unless stated otherwise.

the employees, to be present to prevent them from entering the back of the café and to walk the on-duty employees to their cars at the end of their shifts. Amodio agreed and said he would ask for keys from the employees attending the meeting, and Diegelman implicitly agreed. They both went to the café before 2 p.m. to inform the on-duty barista of these plans. Before leaving, Diegelman wrote on the chalkboard intended for menu specials, “SMILE you are on CAMERA” followed by a drawing of a smiley face.

As more fully explained by the judge, when the employee group⁵ entered the café on October 30, Godus began recording the event on her cell phone.⁶ When the group realized that Diegelman was not there, they decided to wait another 20–30 minutes. Amodio, who was seated in the corner, kept Diegelman informed by text, promising to “get locks changed tomorrow.” The employees, after seating themselves at tables, discussed how long they should wait; one suggested that when the on-duty employees’ shift was over, “we should just pull out.” Godus responded, “It’s true. I mean, regardless we all have keys here.” Schuster responded, “Hold on. If this doesn’t pan out, I’m going to leave mine on the counter.” Godus asked, “You’re just dippin’?” Schuster replied, “Yeah, I’m just—I’m just done.” Another employee warned, “They’re going to take that as you quitting.” Then Godus told Schuster that he should inform Diegelman in writing that he was quitting “if you are. If you so choose. If not, then just show up for [your] scheduled shifts.” The employees continued to sit quietly at the tables.

Less than 5 minutes later, Amodio stood up and asked the employee group whether they had read the sign on the chalkboard. He asked Godus whether she had a key for him and told her to put it on the table. Godus asked, “Am I being fired?” and she and another employee insisted on documentation if they were being fired. Amodio repeated his demand for her key at least ten more times, stating also that she no longer needed a key and that she did not “have that responsibility anymore.”

After waiting approximately an additional half hour, the employee group prepared to leave when the store closed. According to the judge’s uncontested factual findings, Amodio then physically prevented another employee from going behind the counter to collect his paycheck, and, when Fiato attempted to intervene, Amodio grabbed Fiato’s neck with both hands. Schuster observed the entire interaction from approximately ten feet away. At some

point before exiting the café, Schuster left his key on a table. After the employee group left, Amodio texted Diegelman that he had obtained one key, which Amodio incorrectly assumed had been left by Godus, and Diegelman replied, “Oh good.”

Later that day, without notice to any of the employees in the group, Diegelman excluded all of them from a newly created schedule and changed the locks to the café. When Godus and Battenfield appeared for their regular shifts on November 1 and 2, respectively, they found themselves locked out of the café, dropped from the schedule, and accused of trespassing, with Diegelman threatening to call the police. In the first week of November, Diegelman mailed letters to Godus, Schuster, Battenfield, and Fiato, enclosing their final paychecks with the message that upon entering the café, “[y]ou will be arrested immediately for trespassing.” Since then, Diegelman never contacted anyone in the employee group about returning to work.

Discussion

As mentioned previously, although the judge found several Section 8(a)(1) violations based on the Respondent’s actions toward the employees in the employee group, he dismissed certain complaint allegations insofar as they pertained to Schuster based on his finding that “Schuster’s conduct [on October 30] was unequivocal evidence that he resigned once he left the café.” The General Counsel excepts to this finding. In support of the judge’s finding that Schuster resigned on October 30, the Respondent argues that Schuster’s recorded statements show that Schuster expressed to his coworkers the condition by which he would remain employed with the Respondent (i.e., the employee group’s requested meeting with Diegelman “pan[ning] out”) and that when that condition was not fulfilled, he left his key on the table and did not show up for his upcoming shifts at the café. The Respondent accordingly contends that the judge correctly determined that Schuster’s voluntary abandonment of his job precludes finding that it unlawfully discharged him for engaging in a protected work stoppage.⁷ We find merit in the General Counsel’s exception.

Under well-established Board law, the Respondent’s position is an affirmative defense that requires the Respondent to present “unequivocal evidence of [Schuster’s] intent to permanently sever [the] employment relationship.” *Atlantic Scaffolding Co.*, 356 NLRB 835, 838

⁵ The judge’s reference to “the employee group” included Samantha Godus, Quinn Schuster, Reese Fiato, and Alyssa Battenfield.

⁶ The recording was introduced as an exhibit at the hearing and the hearing transcript contains both a transcription and explanation of the recording’s audio. As demonstrated below, the judge made several errors in reconciling the audio recording with the transcription.

⁷ We note that the judge raised the theory of job abandonment *sua sponte*; the Respondent neither pled it as an affirmative defense nor raised it in the hearing by questioning Schuster or presenting arguments in its posthearing brief. The Respondent has only addressed the issue in its answering brief to the General Counsel’s exceptions brief.

(2011) (alteration in original) (quoting *L.B. & B. Associates, Inc.*, 346 NLRB 1025, 1029 (2006), enfd. mem. 232 F. App'x 270 (4th Cir. 2007)).⁸

For the reasons discussed below, we find that the Respondent here has not met its burden. As an initial matter, although Schuster discussed with his coworkers the possibility that he would leave his key on the counter, Amodio's intervening conduct means that Schuster's decision to leave his key cannot be understood as *unequivocal* evidence that Schuster intended to voluntarily resign. According to the judge's uncontested and record-supported factual findings, Amodio, as the Respondent's agent, carried out a plan, conceived and approved by Diegelman that morning, in which he repeatedly demanded the employees' keys before changing the locks to the café in retaliation for their protected work stoppage. Schuster testified that Amodio "asked for all of our keys" and explained that "I did give my key" because "I had a feeling that I was already fired." Because Schuster's testimony and record evidence of Amodio's conduct on October 30 could support a factual finding that Schuster surrendered his key because of Amodio's demands, the Respondent cannot meet its burden to establish, by unequivocal evidence, that Schuster, in fact, left his key on the table because he had voluntarily chosen to permanently sever his employment relationship with the Respondent.⁹

In addition, the judge made a critical error in evaluating Schuster's testimony that he believed he was fired because Amodio asked for the employees' keys. Although the judge recognized that Schuster never informed Diegelman that he was resigning and that Diegelman sent Schuster a letter threatening to call the police if he returned to the café, he appears to have discredited portions of Schuster's hearing testimony by finding it in conflict with his earlier recorded statements. However, the judge misinterpreted Schuster's hearing testimony, which explained why, in retrospect, he *did not* return to work after the incident on October 30, as if Schuster had explained, on October 30, why he *would not* be returning to work.¹⁰ Correcting the error, we find no conflict between Schuster's hearing testimony that he did not return to work after the October 30 incident because he did not feel safe there, assumed he was fired, and had been threatened with arrest for trespass, and his earlier recorded private conversation with his

coworkers that he was considering leaving his key if the requested meeting with Diegelman did not "pan out."

Finally, we reject the Respondent's contention that Schuster's failure to return to work after October 30 further demonstrates his intent to quit. In our view, the Respondent's actions on October 30 are more probative in establishing the reason why Schuster did not return to work. Moreover, in *Atlantic Scaffolding*, 356 NLRB at 838, the Board found that the respondent had failed to establish job abandonment by employees engaged in a work stoppage because it "did not even solicit any employees to return to work, much less receive notice of a refusal to return to work." Similarly in this case, Diegelman did not solicit anyone in the employee group to return to work after October 30, nor did she receive any communication or resignation notice from Schuster. Instead, she sent the employee group—including Schuster—individual letters threatening arrest for trespassing if they entered the café, and enclosed their final paychecks, which the judge found to effectively sever the employment relationship. The Respondent's job abandonment defense is further undermined by the fact that it placed Schuster's name on a "denied entry" list for its facility. See *id.* at 838 fn. 11.

In sum, because we find that the Respondent did not sustain its burden to show unequivocal evidence of Schuster's resignation, we reverse the judge's dismissal of allegations with respect to Schuster and find that the Respondent violated Section 8(a)(1) by discharging Schuster, removing Schuster from the work schedule, and locking Schuster out of the café for the same reasons that the judge found those violations as to Godus, Battenfield, and Fiato. We will order the same remedies for Schuster as those granted to Godus, Battenfield, and Fiato.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3(a):

"(a) Discharging employees Samantha Godus, Quinn Schuster, Alyssa Battenfield, and Reese Fiato in retaliation for their protected concerted activity;"

Substitute the following for Conclusion of Law 3(d):

"(d) Removing Godus, Schuster, Battenfield, and Fiato from the work schedule and locking them out of its facility;"

Delete Conclusion of Law 5.

⁸ See also, e.g., *Hy-Brand Industrial Contractors, Ltd.*, 366 NLRB No. 94, slip op. at 1, 5 (2018); *Zimmerman Plumbing & Heating Co.*, 339 NLRB 1302, 1304 (2003); *S & M Mfg. Co.*, 165 NLRB 663, 663 (1967); accord: *NLRB v. Augusta Bakery Corp.*, 957 F.2d 1467, 1473, 1475 (7th Cir. 1992) (finding that, given the employer's burden of proof, in order "[t]o establish abandonment [of employment] . . . an employer must present unequivocal evidence of the striker's intent to permanently sever the employment relationship") (citations and internal quotation marks omitted), enfg. 298 NLRB 58 (1990).

⁹ Because the Respondent has failed to establish, by unequivocal evidence, that Schuster resigned on October 30, we find it unnecessary to decide whether the Respondent, through Amodio, discharged Schuster before he placed his key on the table and left the café that day.

¹⁰ Schuster's unabridged hearing testimony in response to the question, "after [October 30], did you ever go back to Lancaster Coffee?" reads, "I didn't feel safe there. I assumed I was fired. And I also received a letter in the mail telling me that if I came back, I would be arrested for trespassing."

ORDER

The National Labor Relations Board orders that the Respondent, Lancaster Coffee Co. & Café LLC, Lancaster, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging employees because they engage in protected concerted activities.
 - (b) Creating the impression that it is engaged in surveillance of its employees' protected concerted activities.
 - (c) Physically restraining or assaulting employees because they engage in protected concerted activities.
 - (d) Removing employees from the work schedule and locking them out of its facility because they engage in protected concerted activities.
 - (e) Threatening employees with trespassing charges and arrest if they return to the Respondent's facility, because they engage in protected concerted activities.
 - (f) Refusing to allow employees onto its property because they engage in protected concerted activities.
 - (g) In any like or related manner interfering with, restraining, or coercing its 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, offer Samantha Godus, Quinn Schuster, Alyssa Battenfield, and Reese Fiato full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
 - (b) Make Samantha Godus, Quinn Schuster, Alyssa Battenfield, and Reese Fiato whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision as amended in this decision.
 - (c) Compensate Godus, Schuster, Battenfield, and Fiato for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 3 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.
 - (d) File with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed either by agreement or Board order or such additional time as the

Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 forms reflecting the backpay awards.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Godus, Schuster, Battenfield, and Fiato, and within 3 days thereafter, notify the employees in writing that this has been done, and that the discharges will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Lancaster, New York facility copies of the attached noticed marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 3, 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, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 30, 2022.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 3 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. September 30, 2026

James R. Murphy,

Chairman

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

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 discharge you for engaging in protected concerted activities.

WE WILL NOT create the impression that we are engaged in surveillance of your protected concerted activities.

WE WILL NOT physically restrain or assault you for engaging in protected concerted activities.

WE WILL NOT remove you from the work schedule and lock you out of our facility because you engage in protected concerted activities.

WE WILL NOT threaten you with trespassing charges and arrest if you return to our facility, because you engage in protected concerted activities.

WE WILL NOT refuse to allow you onto our property because you engage in protected concerted activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer Samantha Godus, Quinn Schuster, Alyssa Battenfield, and Reese Fiato full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Samantha Godus, Quinn Schuster, Alyssa Battenfield, and Reese Fiato whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest, and WE WILL also make such employees whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful discharges, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Samantha Godus, Quinn Schuster, Alyssa Battenfield, and Reese Fiato for the adverse tax consequences, if any, of receiving lump sum backpay awards, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 forms reflecting the backpay awards.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Samantha Godus, Quinn Schuster, Alyssa Battenfield, and Reese Fiato, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

LANCASTER COFFEE CO. & CAFÉ LLC

The Board's decision can be found at <https://www.nlr.gov/case/03-CA-306479> 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



Desmond D. Metzger, Jessica Cacaccio, and Shane Greene, Esqs., for the General Counsel.

Steven M. Cohen and Rachel L. Wright, Esqs. (Tiveron Law LLC), of Amherst, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Buffalo, New York, on January 2–3, 2024. Based on timely filed charges by Samantha Godus, the General Counsel issued a complaint alleging that the Respondent, Lancaster Coffee Co. & Café LLC, violated Section 8(a)(1) of the National Labor Relations Act (the Act)¹ in the following manner because employees engaged in protected concerted activities for the purpose of mutual aid and protection: (1) about October 30, 2022, physically restrained/assaulted an employee;² (2) about October 30, installed a sign which read, “Smile you’re on camera” and informed employees they were being recorded; (3) about November 1, removed employees Samantha Godus, Alyssa Battenfield, Quinn Schuster, and Reese Fiato (the employee group) from the work schedule and locked them out of the Respondent’s facility (the Respondent’s facility or café); (4) about November 1, threatened the employee group with trespassing and arrest if they returned to the Respondent facility; (5) about November 1, refused to allow employees into the Respondent’s facility; and (6) about November 1, discharged Samantha Godus, Alyssa Battenfield, Quinn Schuster, and Reese Fiato.³

The Respondent denies that it violated the Act for several reasons: (1) Frank Amodio, the individual who allegedly restrained or assaulted an employee, was not acting as the Respondent’s Section 2(13) agent; (2) If found that Amodio was its agent, his actions far exceeded the scope of his authority; (3) Amodio lacked apparent authority employees did not reasonably believe that his actions were taken on its behalf; (4) The employees were not terminated but resigned; (5) The employees were not taken off the schedule but were on strike; (6) The “Smile you’re on camera” written on a chalkboard was not coercive; (7) The employees were not threatened, discharged, or barred from the café because each one was provided with a notice of trespass based on the advice of law enforcement and adversarial charges.

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a limited liability company, operates a café in Lancaster, New York, where it annually derives gross revenues in excess of \$500,000 and receives products, goods, and materials valued in excess of \$5000 directly from points outside the State of New York. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent’s Operations

The café is owned by Tracy Diegelman. At the relevant times, Godus and Schuster were managers. As the primary manager, Godus oversaw the day-to-day operations, drafted employee work schedules, handled “behavioral issues,” ordered and stocked supplies, handled customer issues, and served as “the primary liaison between ownership and the employees.” Schuster also had some managerial duties. However, Diegelman made the termination decisions.⁴ The baristas included Battenfield, Fiato, Martinez-Rowell, Amarya Sharpe, Ella Gugliuzza, Lilah, and Tatiana. Jon Seyler was a cook.

Throughout 2022, the Respondent’s employees had several concerns with workplace safety. One issue was the inability to lock and unlock the café door from inside the cafe. This was problematic when the store closed in the evening and employees had to count the money. On one occasion, Godus and two other employees inadvertently locked themselves in the store. They only got out after going into the basement, walking through a tunnel that connected the stores on the block, unsuccessfully attempting to exit through the toy store and, finally, calling someone to come and let them out. Other employee concerns included the constant smell of gas in the kitchen from pilot lights that did not work and burning electrical wires, rats, infestations, and fire hazards.

The employees also had issues with decreased work hours and inconsistent pay rates. They constantly brought these issues to Godus, which led to Godus having an hourlong conversation with Diegelman on October 20. During that meeting, Godus explained that “there were a lot of concerns happening among employees, among myself. . . such as pay, hours, expectations, some safety concerns.” Godus went into detail regarding the concerns of doors locking, gas leaks, and decreased work hours. Diegelman told Godus she would look into these issues.⁵

B. Employee Group Emails Their Concerns To Diegelman

After none of these issues were resolved, Godus sent a text message on October 26 to coworkers inviting them to a barbecue in her backyard on October 28 to discuss those issues over food and drinks.⁶ The employees who showed up included Battenfield, Schuster, Fiato, Seyler, Martinez-Rowell, Gabby Abbott, and Lauren. During this get together, the employees discussed their workplace concerns and agreed to communicate them to Diegelman. As they spoke, Schuster and Godus distilled their concerns into an email to Diegelman. Schuster typed the first half of the email; Godus drafted the second half.⁷

We will not be showing up for our shift tomorrow, Saturday, October 29th, 2022. This is due to our desperation for a better work environment. Months of your general absence and lack

¹ 29 U.S.C. §§ 151-169.

² All dates are in 2022 unless stated otherwise.

³ On the General Counsel’s unopposed motion, the complaint was amended at hearing to remove any reference to Jesenia Martinez Rowell. (Tr. 7-8.)

⁴ Neither Godus nor Schuster are alleged to be supervisors pursuant to Section 2(11) of the Act. (Tr. 93, 145, 157, 202.)

⁵ Diegelman testified that she addressed or attempted to address the employees’ concerns, attributed the employees’ inconsistent work hours to the seasonal fluctuations of the business, and insisted that she urged Godus to hire more employees. (Tr. 94–100, 168, 208, 237–238, 242–260.)

⁶ GC Exh. 9.

⁷ GC Exh. 2; Tr. 101-103, 207.

of leadership, has resulted in a workplace with intolerable conditions. The workplace environment at Lancaster Coffee Company can be best described as hostile, hectic, and nothing resembling fair. This is because of a multitude of issues not limited to: compensation, lack of hours, chronic short-staffing, safety hazards, and the emotional damage that has resulted from your past outbursts.

We as a staff are more than willing to return to work when some of our reasonable demands are met. Our demands are as follows:

1. A lock on the front door that isn't faulty, and can be locked and unlocked from the inside with ease. Counting the drawer at night with a door that [cannot] be properly locked is a security risk. Someone could walk in and easily overpower the closing barista, taking the money from the drawers, in addition to potentially harming staff. Loss of property and especially any resulting bodily harm could be easily avoided. We do not want a tragedy in the cafe.
2. An actual check for a gas leak in the kitchen. For the past couple years customers have always mentioned the distinct natural gas smell when they walk in. The staff has complained about headaches after working in the kitchen for a long time. Recently, the burners on the stove have gone off without anything being near them, and filled the kitchen with a strong odor of gas. We ask that it at least be checked out by a professional. In addition to this we would like to add the fact that the current ventilation cannot properly ventilate whirl, and the build-up of grease is having ill effects on some of the staff.
3. The pay scale is ridiculously inconsistent between members of the staff. Recently hired barista's are paid below minimum wage on the basis that they are tipped, like a waitress. But unfortunately, a barista is not a waitress but is a full on food service professional; making beverages, maintaining restaurant hygiene, and even working as a line cook. Pay scales must be consistent between the staff. Other local cafes are more than able to pay their baristas 15 dollars an hour minimum, restaurants nearby start their line cooks at 17, managers consistently make 20 dollars an hour across the board. We think that these are reasonable enough for our cafe.
4. The hours for the kitchen need to be sorted out so that kitchen staff are given adequate time for prep work. In the past when Mike was in charge of the kitchen, staff would come in around 6:30 AM, 2 hours before we opened the cafe. With our current hours: we have 30 minutes to prep the entire kitchen for the day. In the recent past, staff members have stayed after shift to prep the kitchen for the next day but have only gotten disciplined for it. Employees are willing to start earlier or stay later but need to be compensated for it.
5. We as a staff request that the owner work at least 1-2 full 8 hour shifts a week at the cafe. The owner must be willing to

help out their staff when needed. This includes, anytime management cannot cover shifts or are already working that specific shift and there are no other employees to cover the needed shift. More often than not, while the cafe is busy the owner can be found sitting off to the side unbothered to help out her staff. This creates an unbalanced work environment. Employees cannot and will not perform well knowing that the owner isn't willing to assist in a time of need.

6. We request to no longer work in a hostile environment. Often employees are yelled at and disciplined for things that could have been approached with kindness. Blame is passed around from employee to employee instead of having a healthy, productive conversation that leads to resolving the issue at hand. Employees have been directly sworn at and called emotionally damaging things by the owner. This is unacceptable by all means. This alone is enough to file a complaint with the New York Division of Human Rights.

Your staff is willing to come back to work once this is sat down and talked about with you and your entire staff. We suggest Sunday, October 30th at 2pm for this conversation to take place.

C. Diegelman And Amodio Prepare For The October 30 Meeting

None of the employees who got together at Godus' house on October 28 went to work on October 29 or 30. On October 29, Diegelman mistakenly messaged Battenfield instead of Martinez about missing her shift that day. Battenfield replied that she was unavailable that day but suggested they meet on October 30 at 2 p.m.—the same date and time suggested in the October 28 email. Diegelman did not respond.⁸

On October 30, Diegelman planned with Frank Amodio, her boyfriend, for a response to the employee group at 2 p.m. She asked if he could get a locksmith to change the café door locks. Diegelman also shared Godus' text messages that "they are all coming at 2," Godus said she was "going to talk to an attorney . . . I doubt that . . . The goal is to make me fire them." Amodio replied, "Do not fire them. Be cordial to them [.] No loitering I'll be there don't worry." At some point, Diegelman decided that she did not want to be present when the employee group showed up. Instead, she asked Amodio be there, ensure that none of them entered the back of the café, and walk the on-duty employees to their cars at the end of their shift. Amodio agreed and stated that he would ask the employees for their keys to the café. Diegelman implicitly agreed.⁹

Sometime before 2 p.m., Diegelman and Amodio went to the café. Diegelman informed Ella Gugliuzza, one of the employees working that day, that Amodio would be there, would request the keys from the employee group, and escort the on-shift employees to their cars after their shift.¹⁰ Shortly after this conversation, and before the employee group arrived, Diegelman left the

⁸ GC Exh. 12.

⁹ Diegelman's testimony that she only decided to flee the café when she learned that the employee group was "posturing themselves" outside in a "nefarious" manner was not credible. She never saw the group before they went into the café and, coupled with her text messages with Amodio

that morning, it is clear that Diegelman never had any intention of meeting with them that day. (Tr. 20-21, 26-27, 69; GC Exh. 17 at 1-3.)

¹⁰ Amarya Sharpe testified that the other employees working that day included Gugliuzza, Lilah, and a newly-hired employee, Quinn Mackowiak (Tr. 292.)

shop.¹¹

A few minutes before 2 p.m., Godus, Battenfield, Schuster, Fiato, and Seyler (the employee group) met in the parking lot down the block from the café.¹² Around the same time, Amodio messaged Diegelman that there were “customers in here so I will not rush them.” At 2 p.m., Diegelman asked Amodio to lock the café doors. Amodio replied that the doors could not be locked from the inside. Diegelman explained that she could come and unlock them from the outside, “[b]ut no worries if you got this.” Amodio replied, “I got this.” Diegelman thanked him.¹³

D. The Employee Group Attempts To Meet With Diegelman On October 30

At approximately 2:03 p.m., everyone in the employee group, except for Martinez, walked to the café. Godus began recording on her cell phone and would record the next 25 minutes and 46 minutes.¹⁴ As they entered, Schuster noticed Courtenay Sharpe, Amarya Sharpe’s mother, and another female sitting outside and staring at them as they walked into the café.¹⁵ Once inside the café, they sat at the small tables. Amodio, unknown to the employee group, was seated at a corner table by the door, about 10 feet away from where Godus was seated. In addition, Courtenay Sharpe and Lenore Sharpe were seated at a table outside the café with the intention of monitoring the activities of the employee group.¹⁶ Realizing that Diegelman was not there, Fiato and Godus decided the group should wait 20-30 minutes to see if she would show up. (0:01:05).¹⁷ Two minutes later, Godus asked Gugliuzza if she was still serving customers. Gugliuzza said, No, we’re not. I’m sorry. We’re closed.” Either Godus or Battenfield replied that she worked there too and Gugliuzza replied, “Oh, okay. No worries. We’re closed. I’m sorry. We close at 2:00 on Sundays. (0:03:17) The employee group then engaged in conversation until Schuster noticed that the café chalkboard, which usually advertised menu specials, read: “SMILE you are on CAMERA,” followed by a drawing of a smiley face.¹⁸ Fiato commented that he did not think there was a camera in the café. (0:06:50)

Seyler asked about his paycheck and Fiato suggested he “could ask Ella or Lilah to do it for you.” (0:08:30) Godus comments that Seyler was “allowed to go back there, you still

work here.” Fiato added that Seyler was “technically on the books employee until she formally fires you or after a certain amount of time . . .,” but Godus suggests Seyler “wait till we leave. That’s probably why.” (0:08:42.) Fiato commented that if Diegelman “remains absent, we could also still talk to the NLRA about it. And you know, we made an attempt. . . . This is a protected act. Everything was not reciprocated.” (0:09:05) Godus concurred, lamented that it was unfortunate that Diegelman was not addressing the group. (0:09:27) At 0:10:05, Fiato said, “13 more minutes.”¹⁹ Godus replies that she is “going to stay here until about 2:40 because we didn’t really walk in here until about 10 [minutes] after. (0:10:20) At 2:38 p.m., Referring to the two on-duty employees, Fiato suggests that “whenever they’re done we should just pull out.” (0:10:24) Godus agreed and noted that they all still had their keys. (0:10:33) Schuster, however, expressed his intention to leave his on the counter . . . because “I’m just done.” (10:23-10:41) In response, Godus advised Schuster to notify Diegelman in writing if he was “dippin”—i.e., decided to quit—but, if not, to show up for his shift. (0:11:00). Two minutes later, Godus “noted that there are cameras here and we literally have visual proof that we were here at 2 o’clock, the time we stated in the document.” (0:13:40)

E. Gugliuzza And Amodio Update Diegelman On The Employee Group’s Discussions

Gugliuzza also kept Diegelman informed about the employee group via text messages. Between 2:10 and 2:15 p.m., Gugliuzza and Diegelman exchanged the following messages:²⁰

Gugliuzza: [t]hey said they ar[e] waiting 20-30 mins to wait for you ... but don’t show up

Diegelman: I won’t

Gugliuzza: [thumbs up emoji]

Diegelman: They are crazy

Gugliuzza: they are staying here till 2:49 . . . 2:40 they said

Diegelman: We’ll Frank will lock the doors I’ll tell them if you are done . . . Just if you can stick all the coffees and powders and cups and do the bathroom and the creamer hutch

¹¹ Diegelman testified that she intended “to sit down on a constructive basis with those employees to work out their concerns,” but that never happened “because of the way that they - - two o’clock came, they were intimidating. They were intimidat[ing] and they looked nefarious.” To the contrary, Diegelman never saw the employee group until after she left the café. Nor do I credit her vague and uncorroborated hearsay testimony that a customer allegedly told her that the way they were “posturing themselves” simply because “they all met in a group.” (Tr. 48-49, 65, 79, 306-310.)

¹² Martinez Rowell decided not to show up for the October 30 meeting. (Tr. 317-318, 323-324.)

¹³ GC Exh. 17 at 11-13.

¹⁴ Having carefully listened to the recording, I found several transcription errors. As such, the findings regarding the employee group’s time in the café on October reflect my understanding as to what was said. (GC Exh. 5.)

¹⁵ The other female sitting with Courtenay Sharpe was her sister, Lenore Sharpe. (Tr. 210.)

¹⁶ Courtney Sharpe, Lenore Sharpe’s sister and Amarya’s mother, was not credible. She asserted that she and her sister were having coffee after going “window shopping, and looking at some property over there,” when she “noticed a commotion inside of the coffee shop.” (Tr. 273-276.) Amarya Sharpe revealed, however, that her mother planted herself outside the café because the anticipated “confrontation” with the employee group made Amarya Sharpe “super uncomfortable.” (Tr. 292-294., 300-301.)

¹⁷ The parenthetical references denote the times elapsed in the recording. Additionally, the approximate times of the day were determined based on Godus’ statement that it was 2:20 p.m. at the 0:17:37 point in the recording. (GC Exh. 5.)

¹⁸ The chalkboard message was written by Diegelman. She told the investigating police officer that she did not have any cameras in the café but “just made the sign up and put it up to ward off any issues.” (GC Exh. 10; R. Exh. 13 at 3.)

¹⁹ Fiato stated “13 more minutes,” not “two more minutes,” as stated in the transcript. (Tr. 119.)

²⁰ GC Exh. 3.

Gugliuzza: okay . . . okay . . . what are the tips for online

Diegelman: Ok looking now . . . Frank is going. To ask them for the key

Gugliuzza: yeah they said no . . . they said they aren't leaving

Diegelman: What . . . No Way

Gugliuzza: yeah . . . they won't put [their] keys on the table either . . . they said they have never met you . . . and they said if you don't have documentation of you firing them then they aren't fired . . . and they are waiting for you.

Diegelman: [Frank] will take care of it . . . He lives for this

Gugliuzza: okay

Diegelman: Oh gosh . . . 204

Amodio also kept Diegelman updated: "They think they are waiting 1/2 hour for you." Diegelman replied that "[t]hey better not go back in that kitchen[.] They think I'm there." Amodio assured her that "[t]hey sitting nicely" and attached a photograph of the employees sitting and occupied with their cell phones. Diegelman asked him to let her "know when the coast is clear I'm at the toy store." Amodio commented, "This is fun to listen to their BS." He noted that Godus had a brief case and "really thinks she is scheduling shifts for everyone still." Diegelman replied, "No way[.] "That's too bad they are not heartfully sorry for doing this to me[, my family, the staff[, the customers[, and my dad . . . fuck them." Amodio replied that he was her "[personal body guard] and head of security." Diegelman agreed, "Yes you are." Amodio then told Diegelman that he would "get locks changed tomorrow."²¹

At about 2:20 p.m., Godus asked Gugliuzza, "How's it going? How are you - - how is your homecoming? Gugliuzza replied that her homecoming event was boring. (0:17:02) Godus then noted for the recording that the employee group expected to meet with Diegelman at 2 p.m. and it's now 2:20 p.m. (0:17:37) A few seconds later, Amodio stood up and referring to the chalkboard, addressed the employee group: "Y'all read the sign, right?" (0:18:02) After getting Godus to identify herself, Amodio asked if she "had a key for me?" Godus acknowledged that she had a key but asked "why would I have a key for you" and asked, "Am I being fired?" (0:18:16) Amodio said she was not being fired but to leave the key on the table "[b]ecause you don't have that responsibility anymore." Godus replied that she

needed written documentation if she was being fired. She also asked if she was being demoted and told Amodio, "I apologize, I don't believe we've met." (0:18:44) Amodio continued to insist that she put the key on the table when the employee group was "done with this little charade." (0:19:05) Godus agreed and Amodio replied, "When they're done, we're all leaving together. We're just waiting. You guys can stay here as long as you want." Godus commented that the employee group was waiting for Diegelman. Amodio replied that the employee group could "[w]ait until she's here. You can leave whenever you want. We're not waiting with you, we're not leaving with you." Fiato insisted that everyone in the employee group had a key and, unless Diegelman was firing them, they needed documentation to that effect. He added that they were not leaving nor would they give him their keys. Godus reiterated that she had never met Amodio and did not feel comfortable leaving her key with someone she did not know. (0:20:10) Either Fiato, Schuster or Seyler then pointed out that the employee group needed to leave when the café closed and they agreed to wait until then. (0:20:42) Battenfield interjected that "I also have a check here." Amodio then went back to his corner table and the employee group remained sitting until the 30 minutes they gave Diegelman elapsed or the employees were closing the café. (0:23:38) (Tr. 122-128.)

F. A Scuffle Breaks Out When Seyler Attempts To Get His Paycheck

At approximately 2:26 p.m., the employee group concluded that Diegelman was not coming, decided to leave, and Godus started walked towards the door. (0:23:38) Seyler, however, said he was going to get his check and began to walk towards the counter and Battenfield asked him to pick her check as well. (0:23:43).²² Amodio suddenly lunged at Seyler and grabbed the back of his neck. Almost as quickly, Fiato reacted and pushed his arm in between them. Amodio turned around and grabbed Fiato's neck with both hands.²³ Within seconds, the Sharpe sisters bolted into the store. As Fiato argued with Amodio, Courtenay Sharpe grabbed Fiato. Fiato told her Amodio had pulled Seyler by the neck but she did was not sympathetic: "I don't give a shit, get out of here." Fiato turned away and started walking to the door but Courtenay Sharpe began pushing him from behind. ²⁴ Get out of here." (0:24:09) Amodio then said, "You're not coming back here at all." Fiato began to respond when Courtenay Sharpe grabbed him and he yelled, "Don't fucking touch me lady." (0:24:17)²⁵ Courtenay Sharpe replied, "Dude, you

²¹ GC Exh. 17 at 0014-0017.

²² It is undisputed that off-shift employees were permitted to walk into the kitchen to pick up their paychecks. (Tr. 93, 213.)

²³ Fiato, Schuster, and Battenfield provided fairly consistent and credible testimony regarding Amodio's aggression in grabbing Seyler by the back of his neck or collar. (Tr. 174, 213, 231-233.) Schuster also witnessed Fiato then "put his hand on [Amodio's] shoulder to try and separate them," and "[Amodio] then turned and grabbed [Fiato's] throat." (Tr. 212-213.) The Respondent's witnesses, on the other hand, did little to counter the credible evidence that Amodio was the aggressor. Amara Sharpe did not see how the scuffle started, while Gugliuzza's testimony—that Fiato also went to go in the back and Amodio merely "put his arm out like, to like stop him from going back"—was tentative, overgeneralized and inconsistent with the credible evidence. (Tr. 306.) Courtenay Sharpe testified that she saw several employees "[p]hysically assaulting

[Amodio]" because he was "in a defensive position trying to push them away," and she "ran over and I got in between - - well, I pushed my arm in front of [Fiato] to get him away." (Tr. 273-275.) However, she did not witness the initial scuffle and conceded that Fiato told her that Amodio was choking him. She replied that it did not matter and he needed to leave. (Tr. 274-275.) Moreover, the video shows Amodio a few steps away from Fiato when she bolted into the café. (GC Exh. 11.)

²⁴ GC Exh. 11 at 0:10-0:15.

²⁵ Fiato and Schuster provided credible and fairly consistent versions, corroborated by Gugliuzza, of Courtenay Sharpe's aggression in grabbing Fiato. (Tr. 213, 231.) Gugliuzza recalled that Fiato went to leave and then Courtenay Sharpe "came in and kind of like not pushed him, but like moved him out of the way. And [Fiato] also put hands on her, as well." (Tr. 306.) Courtenay Sharpe's testimony, however, lacked credibility and consistency. She initially testified that she merely pushed

don't know who you're fucking with, and told him to "get the fuck out of here" three times. She eventually let go of Fiato as he asked, "What are you going to do about it?" (0:24:25) He continued protesting as the Sharpe sisters pushed him out of the café and Courtenay Sharpe yelled at him to "leave" and "act like a man and walk away from a woman." Fiato replied that he was walking away but Courtenay Sharpe did not let it go: "You're not invited here." Fiato insisted that he worked there but Courtenay disagreed: "No you don't. This is not a union." (0:24:38) As the employee group walked away, Fiato told Amodio and the Sharpes to tell Diegelman that "We need our firing in writing by the way. Otherwise, we'll be back in our shifts." (0:24:52)

As they walk away from the café, Godus asked what happened. Fiato explained that Amodio "was starting to grab [Seyler]. So I pulled him back. I said, get off of him." Seyler: I went to the back to grab a [check], [Amodio's] like no." Fiato: "The guy came after him. I'm like no, get back. Don't touch him . . . And then he put his fucking hands on my neck. . . Yeah. So I was about 10 seconds away from fucking clocking him in the mouth. Fucking old fuck like that. He's so easy to kick . . . I put my hand out to block him from punching [Seyler] more and then he grabbed me on the neck." Battenfield: He was pulling at [Seyler]. I know that much. Seyler confirmed that Amodio "was reaching for me and [Fiato] got in front of him before." Battenfield then asserted, "if there's cameras there, that will prove it right then and there." (0:24:54-0:25:46)

After the employee group left, Amodio messaged Diegelman that he had a [s]mall altercation with [Fiato]" when "[Seyler] tried to go back for a check[.] I kicked him out." He also told her that he had one key that was left on Godus' table. Diegelman said, "Oh good."²⁶

G. Godus Attempts To Return To Work

On October 30, Diegelman created a new schedule excluding the members in the employee group. However, she failed to notify anyone in the employee group about that change. At about 7:26 a.m. on November 1, Godus arrived at the café for her next scheduled shift. She started recording on her cell phone as she walked to the café. When she got to the café door, it was locked, the lock had been changed, and she could not get in.²⁷ Godus saw Amarya Sharpe, Tatiana, and another employee who she did not know, in the cafe, and motioned to let her in. One of the employees indicated that they were unable to unlock the door.

her arm in front of [Fiato] to get him away" from Amodio and Fiato "backed up enough from the ruckus." Yet, on cross-examination, she conceded that she did push Fiato. (Tr. 282-283.) Moreover, the videorecording shows that Amodio and Fiato were several feet apart when she ran into Fiato. (GC Exh. 11.)

²⁶ GC Exh. 17 at 0019.

²⁷ GC Exh. 6 at 1:20.

²⁸ Diegelman testified that she would have permitted Godus, Battenfield, Fiato, and Schuster to return "after the scuffle thing was taken care of with the police . . . to make a report and then I would go from there." Such an assertion was utterly incredible and contradicted by Diegelman's statements and letters threatening to charge them with trespass if they returned to the cafe. Equally as incredible were: (1) Diegelman's testimony that she did not recall making the following sworn statement in her Board affidavit—"[u]ntil the charge with NLRB is resolved, the charging employees are not allowed on Lancaster Coffee Company

Diegelman arrived shortly thereafter, ignoring Godus as she unlocked the door. Godus asked, "[a]m I not allowed in here, Tracy?" (2:05) Diegelman replied that she was "waiting to hear from my attorney to see if find out if what you did. When your, when you committed your crime in trying to pull a palace coup to try to extort me. I'm waiting to hear back from my attorney to see if you are terminated or if this is a, a quit. We'll be in touch."²⁸ Godus disagreed, insisting that that the employees were "legally within our right to do what we did." Diegelman replied that Godus was trespassing, threatened to call the police, and slammed the door shut. Godus reacted angrily with profanity outside the café and Diegelman left.²⁹

H. Battenfield Attempts To Return To Work

On October 31, Battenfield received a text message from Diegelman. The message was actually meant for Martinez-Rowell and asked her to call Diegelman because she was "working on the new schedule and would like to talk to you about it." On November 1, Battenfield responded, informed Diegelman that the message meant for Martinez was mistakenly sent to her. Battenfield also stated that she had not been informed about a change in her schedule, nor did she quit, ask to be taken off the schedule, or notified that she had been terminated. She concluded by informing Diegelman that she intended to show up for her scheduled shift on November 2 at 8:30 a.m. "unless I am notified that I have been taken off the schedule with the cause stated."³⁰

At 8:30 a.m. on November 2, not having received a response from Diegelman, Battenfield arrived at the café for her scheduled shift. She walked up to the counter and asked if Diegelman was there, adding "I don't know if I'm supposed to be here for my shift or not." Diegelman put down what she was doing and asked Battenfield to follow her to the area next to the door. As she looked at her cell phone, Diegelman remarked, "gosh it's been crazy here getting back in the swing of things." Diegelman finally found the information she was searching for and read the following to Battenfield: "It says you're willing to come back to work once this is sat down and talked about over with your staff but your demands have not been met."³¹ Battenfield attempted to explain, "Uh, that wasn't my thing for me it was" but Diegelman interrupted her: "Do you realize you're trespassing right now and I will call the police if you don't leave." Battenfield said, "okay," and asked for two paychecks owed her. Diegelman

property or they'll be charged with trespassing"—and then claiming it was inaccurate; and (2) her shifting, uncorroborated testimony that she asked Shuster and "other employees who were involved in that scuffle to come back." (Tr. 87-91.) Moreover, Diegelman initially stated in her Board affidavit that she did not have enough new keys to Godus, Battenfield, Schuster, and Fiato. In hearing testimony, however, she conceded that she made six new duplicate keys. (Tr. 83-86.)

²⁹ There is no evidence that Diegelman or anyone else heard Godus curse at Diegelman. (Tr. 135-136, 139-140; GC Exh. 6.)

³⁰ GC Exh. 12.

³¹ Diegelman's testimony, as well as her statement to Battenfield on November 2, were incorrect. (Tr. 71-75; GC Exh. 13 at 1:50-1:59.) In fact, the October 28 letter stated that "staff are more than willing to return to work when *some* of our reasonable demands are met." (GC Exh. 2 at 0004.)

replied that Battenfield would get her paychecks by November 7.³²

I. Diegelman Threatens To Call Police

During the first week in November, Diegelman mailed letters to Godus, Schuster, Battenfield, and Fiato, enclosing their final checks and conveying the following warning:

Please be advised: Entering the business at 24 Central Avenue, Lancaster NY, Lancaster Coffee Co. & Café [LLC]. You will be arrested immediately for trespassing.³³

Martinez-Rowell was eventually rehired by Diegelman in mid-November 2023.³⁴ However, Godus, Schuster, Fiato, and Battenfield were never contacted by Diegelman about returning to work at the café.³⁵

LEGAL ANALYSIS

I. GODUS, BATTENFIELD, AND FIATO ENGAGED IN A PROTECTED WORK STOPPAGE

There is no question that Godus, Schuster, Fiato, and Battenfield engaged in protected concerted activity in the months prior to their discharges on October 30. *Meyers Industries, Inc. (Meyers I)*, 268 NLRB 493 (1984) (concerted activities must be “engaged in with the authority of other employees, and not solely by and on behalf of the employee himself”); *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB , 151, 152 (2023) (Section 7 activity must be both concerted and engaged in for the purpose of “mutual aid or protection”). Godus got the ball rolling on October 20 when she briefed Diegelman on employees concerns regarding employee pay, work hours, and safety. See *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1205 (2014) (employer unlawfully discharged employee for discussing wages with coworkers); *Mid-Atlantic Restaurant Group LLC*, 364 NLRB No. 153, slip op. at 1, fn. 2 (discharged employee engaged in protected concerted activities by attempting to address scheduling problems); *William Beaumont Hospital*, 363 NLRB 1543 (2016) (concerted complaints about staffing and safety are protected).

On October 28, Godus, Schuster, Battenfield, and Fiato met with coworkers at Godus’ house and discussed issues relating to compensation, lack of hours, understaffing, and safety hazards. They emailed those concerns to Diegelman, informed her that they would not report for their shifts until she met with them, and proposed to meet her on October 30. Not having received a response from Diegelman, the employee group did not report for their shifts on October 29. This concerted work stoppage was also a form of protected conduct. See *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 14–17 (1962); *Sun Cab, Inc.*, 362 NLRB

1587, 1587 (2015) (concerted walkout in protest of working conditions was protected activity); *Atlantic Scaffolding Co.*, 356 NLRB 835, 838 (2011) (employees unlawfully discharged for going on a work stoppage over pay demands); *Ridgeway Trucking Co.*, 243 NLRB 1048, 1048 (1979), enf. 622 F.2d 1222, 1223-225 (5th Cir. 1980) (employees unlawfully discharged for refusing to start their deliveries until general manager agreed to meet with them to discuss their pay rates).

On October 30, the employee group continued engaging in protected concerted activity by waiting to meet with Diegelman at the café regarding the workplace concerns expressed in the October 28 email. Diegelman still had not contacted the employee group to discuss their demands, reply to their request to meet with them at 2 p.m. that day, or give any indication that the employee group was prohibited from entering the café. Diegelman did not show up but had Amodio there to collect their keys, prevent any of them from going into the kitchen, and walk the on-duty employees to their cars after the café closed.

The Respondent contends that the employee group’s concerted activities were neither reasonable nor legally enforceable, and thus, not protected because: (1) employees do not have the right to demand a certain number of shifts or set their own hours; (2) their pay demands ignored New York State law permitting tip credits; and (3) Diegelman promptly addressed several of the demands raised by Godus on October 20—the suspected gas leak and the arranging to have a locksmith change the locks.

The Respondent’s arguments miss the mark. Employees’ Section 7 rights entitle them to “walk off their jobs, without prior notice to their employer and without following established plant rules forbidding employees from leaving their work stations without permission, if their action is a means of protesting what they perceive to be intolerable working conditions.” *Tamara Foods, Inc.*, 258 NLRB 1307, 1308 (1981), enf. 692 F.2d 1171 (8th Cir. 1982), cert. denied 461 U.S. 928 (1983) (emphasis in original), citing *Plastilite Corporation*, 153 NLRB 180, 184 (1965), enf. in pertinent part 375 F.2d 343 (8th Cir. 1967). Furthermore, it is irrelevant whether the employees’ concerted activity was reasonable, was as actually as objectionable as the employees claimed it to be, or could have been undertaken in a more “efficacious or reasonable manner.” *Tamara Foods, Inc.*, supra. Here, there is no doubt that the employee group sought to initiate, induce or prepare for group action regarding terms or conditions of employment. *Meyers Indus. (Meyers II)*, 281 NLRB 882, 887 (1986).

II. AMODIO ACTED AS THE RESPONDENT’S SECTION 2(13) AGENT

On October 30, Amodio was expressly authorized by Diegelman to collect the keys needed by the employee group to be able to access and work at the café, prevent employees from going to the back of the café, and walk the on-shift employees to their

³² GC Exh. 13 at 2:00-2:38.

³³ GC Exhs. 8, 14-16.

³⁴ Martinez Rowell reached out to Diegelman in mid-November 2023—a year later—and Diegelman rehired her. (Tr. 66, 322.) This is not surprising, given Diegelman’s failed effort to keep Martinez Rowell on the schedule after the October 30 scuffle. (GC Exh. 12.)

³⁵ Schuster testified that he believed he was fired because Amodio asked for the employees’ keys and said that “he wanted to end this

charade,” and Diegelman sent him a letter threatening to call the police if he returned to the café. (Tr. 214, 216.) Nor is there any evidence that Schuster ever informed Diegelman that he was resigning. However, Schuster’s testimony conflicts with his: (1) statement on October 30 that he was “dippin” and “just done” with working at the café, and was going to leave his key. (GC Exh. 5 at 10:23-10:41; Tr. 120.); and (2) testimony that he left his key on the table before leaving the café on October 30 and did not return because he “didn’t feel safe there.” (Tr. 212-214.)

cars when the café closed. Diegelman and Amodio remained in constant communication by text message as the employee group sat in the café waiting for her to arrive. Amodio remained vigilant and ready to perform his assigned tasks, telling Diegelman that he was her “personal body guard and head of security.” She agreed. Diegelman also briefed Gugliuzza, one of the on-shift employees, regarding Amodio’s role at the café prior to the employee group’s arrival.

Amodio’s subsequent actions in requesting the café keys from the employee group and applying physical force to prevent the employee group members from going into the kitchen were reasonably foreseeable. Diegelman gave him specific instructions to take the coercive actions against the employee group that day and Amodio reasonably believed that his actions were taken on her behalf. Under the circumstances, Amodio had apparent and actual authority to act as Diegelman’s agent on October 30. *Communications Workers Local 9431 (Pacific Bell)*, 304 NLRB 446, 446 fn. 4 (1991) (“actual authority refers to the power of an agent to act on his principal’s behalf when that power is created by the principal’s manifestation to him.”)

III. AMODIO MADE COERCIVE STATEMENTS TO THE EMPLOYEE GROUP

The Board’s test for determining whether an employer has created an unlawful impression of surveillance is whether, “under all the relevant circumstances, reasonable employees would assume from the statement in question that their union or other protected activities had been placed under surveillance.” *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1276 (2005); *Bridgestone Firestone South Carolina*, 350 NLRB 526, 527 (2007). The standard is an objective one, based on the rationale that “employees should be free to participate in union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways.” *Flexsteel Industries*, 311 NLRB 257 (1993).

Prior to the employee group’s arrival on October 30, Diegelman wrote, “Smile you’re on camera,” on the café chalkboard used to display menu specials. Diegelman explained that she intended to have the message seen by the employee group while they waited for her as a way of keeping them in line. This unprecedented use of the chalkboard conveyed a clear message to the employee group that their activities were under surveillance. The Respondent’s agent, Amodio, reinforced that message twice as he demanded their keys, adding that a videorecording of the employee group’s activities would be provided to the local police department.

Under the circumstances, the Respondent’s chalkboard message coerced employees in violation of Section 8(a)(1) by creating the impression that their protected gathering at the café on October 30 was being surveilled. *Dignity Health d/b/a Mercy Gilbert Medical Center*, 370 NLRB No. 67, slip op. at 8-9 (2021) (manager’s statement that he knew employee had been contacted

by the union, without revealing the source of his information, created an unlawful impression of surveillance) *Greater Omaha Packing Co., Inc.*, 360 NLRB 493, 495 (2014) (supervisor gave employee the unlawful impression of surveillance by telling him that an unnamed coworker shared that the employee was the leader of a planned work stoppage); *Conley Trucking*, 349 NLRB 308, 315 (2007) (employer’s statement to employees that it was aware of their protected activities, but did not identify the source of that information, created an unlawful impression of surveillance).

IV. AMODIO PHYSICALLY RESTRAINED AND ABUSED EMPLOYEES IN RETALIATION FOR ENGAGING IN PROTECTED CONCERTED ACTIVITY

An employer violates Section 8(a)(1) of the Act if it assaults or otherwise physically abuses its employees because they engage in protected activities. *Graves Trucking*, 246 NLRB 344 (1979), *enfd.* In pertinent part 692 F.2d 470 (7th Cir. 1982); *Studio S.J.T. Limited*, 277 NLRB 1189, 1194 (1985); *Federated Stores*, 241 NLRB 240, 252 (1979); *Greyhound Taxi Co.*, 234 NLRB 865, 875 (1978); *Hot Bagels and Donuts*, 227 NLRB 1597, 1608 (1977); *Schultz, Snyder & Steele Lumber*, 198 NLRB 431, 434, 435 (1972).

On October 30, Amodio physically restrained Seyler by the neck or collar when walked into the kitchen area to collect his check. In the past, employees had been permitted to go into that area while off-shift to collect their checks. When Fiato jumped in to separate Amodio from Seyler, Amodio turned around and briefly grabbed Fiato’s neck with both hands but Fiato quickly pulled away. Fiato and Seyler had been engaged in protected concerted activity waiting for Diegelman before being confronted by Amodio. Neither Fiato nor Seyler were engaged in misconduct before they were confronted by Amodio, who was acting at the behest of Diegelman—he was her “head of security”—to prevent anyone in the employee group from going into the kitchen area.

The General Counsel alleges that Amodio’s actions towards Seyler and Fiato amounted to physical restraint and assault. After the incident, Fiato filed a complaint with the Lancaster Police Department. The investigating police officer spoke with Fiato, Godus, Amodio, Battenfield, Diegelman, Courtenay, Lenore, and Amarya Sharpe, Gugliuzza, and Quinn Mackowiak. Her report reflected divergent versions of the incident and was inconclusive. Nevertheless, the credible evidence produced at the hearing established that Amodio physically restrained Seyler by the back of his neck or collar and then grabbed Fiato by the throat with both hands. While Amodio’s contact with Fiato was consistent with the dictionary meaning of assault,³⁶ absent evidence of physical injury, it does not satisfy the criteria at Section 120.00 of the New York State Penal Code for the lowest level of assault.³⁷ Accordingly, Amodio’s physical contact with Seyler and Fiato on October 30 is more appropriately characterized as the physical restraint and abuse of employees engaged in protec-

³⁶ Assault Definition & Meaning - *Merriam-Webster*: a violent physical or verbal attack.

³⁷ Under New York Penal Code § 120.00, a person is guilty of assault in the third degree if they negligently injure another person using a

deadly weapon or dangerous instrument. It is a class A misdemeanor. Alternatively, a person is guilty of assault in the third degree if they intentionally or recklessly cause physical injury to another person.

ted concerted activity.

Amodio's inappropriate physical restraint of one employee and physical abuse of another were a reasonably foreseeable outcome of his mandate from Diegelman to prevent off-shift employees from going into the kitchen area. This followed Amodio's harassment of the employee group and insistence that they hand in their keys. Under the circumstances, Amodio's actions coerced employees in violation of Section 8(a)(1).

V. THE RESPONDENT VIOLATED SECTION 8(A)(1) BY TAKING ADVERSE ACTION AGAINST GODUS, BATTENFIELD, AND FIATO BECAUSE THEY ENGAGED IN A PROTECTED WORK STOPPAGE

The Respondent contends that Godus, Schuster, Battenfield, and Fiato were not terminated but essentially abandoned their jobs because "this notice of continued refusal to work, pending the employer's meeting these demands, constitutes a strike, which continues to date."

Godus, Schuster, Battenfield, and Fiato went to the café on October 30 for the purpose of trying to resolve workplace issues. There is no evidence that they intended to resign. "In order to show that employees truly abandoned their jobs, an employer must present 'unequivocal evidence of intent to permanently sever [the] employment relationship.'" *L.B. & B. Associates, Inc.*, 346 NLRB 1025, 1029 (2006), enfd. 232 Fed. Appx. 270 (4th Cir. 2007) (citation and quotation omitted). As the wait for Diegelman dragged on, however, Schuster had a change of heart. His recorded statements—before Amodio confronted them—clearly indicate that he was "dippin' and 'just done,'" was going to leave his key, and would not be returning because he did not feel safe working there. Notwithstanding the unlawful conduct that followed, Schuster's conduct was unequivocal evidence that he resigned once he left the café.

While she did not show up to meet with the employee group, Diegelman placed Amodio at the café and tasked him with the responsibility of taking the door keys—essential items needed to work at the café—from the members of the employee group, preventing any of them from going into the kitchen, and putting an "end to this charade." In orchestrated fashion, Lenore or Courtenay Sharpe—albeit not alleged to be Section 2(13) agents—bolted into the café to assist Amodio in forcing the employee group to leave the café and yelled out that they did not work there anymore. Over the next week, Diegelman changed the locks, took Godus, Schuster, Battenfield, and Fiato off the schedule, sent them letters threatening to call the police if they returned to the café, and denied Godus and Battenfield access to the café and threatened to call the police if they did not leave. At no point did Diegelman tell Godus, Battenfield, and Fiato that their ban from the café and removal from the schedule were only temporary measures while the police investigation was pending. Moreover, Diegelman took no steps to reach out to the employees after the police investigation concluded with no charges.

Here, the credited evidence supports one conclusion—that Godus, Battenfield, and Fiato were terminated because they demanded a meeting with Diegelman to discuss their workplace

concerns. "[W]hen an employer asserts that employees were discharged because they would not return to work after commencing a work stoppage, the assertion suggests that the discharge was for engaging in the work stoppage itself." *Atlantic Scaffolding Company*, 356 NLRB 835, 837-838 (2011), citing *CGLM, Inc.*, 350 NLRB 974, 979-980 (2007), enfd. 280 Fed. Appx. 366 (5th Cir. 2008) (employer unlawfully discharged employees for the very act of going on strike).

The facts here are similar to those in *Atlantic Scaffolding Company*, where the Board rejected the employer's contention of job abandonment based on an employees' work stoppage that had not yet ended. 356 NLRB at 838. Like Godus, Battenfield, and Fiato, none of the employees voluntarily quit their jobs or refused to return to work. Although Godus, Battenfield, and Fiato were not sent termination notices, Diegelman's verbal statements and written notices threatening to have them arrested if they returned to the café—never retracted—effectively severed the employment relationship. An employee may be discharged without formal words of firing. *Matsu Corp., d/b/a Matsu Sushi Restaurant*, 368 NLRB No. 16, slip op. at 1, fn. 2 (2019), enfd. mem. 819 Fed. Appx. 56 (2d Cir. 2020). "It is sufficient if the words or actions of the employer would logically lead a prudent person to believe his [or her] tenure has been terminated." *Nations Rent, Inc.*, 342 NLRB 179, 179-180 (2004).

Similarly, in *Noah's Ark Processors, LLC*, 370 NLRB No. 74, slip op. at 24 (2021), enfd. 31 F.4th 1097 (8th Cir. 2022), 10 employees who left the employer's facility and gathered in the parking lot in an unauthorized work stoppage protesting wage disparities were directed by the operations manager to turn in their identification badges. The badges were needed to get past the security gate, enter the facility, and for timekeeping purposes. The employees could not work without the badges. After turning in their badges, the employees asked if they could wait for the human resources director to arrive. The operations manager refused and told them to leave or he would call the police. A few days later, the employer generated separation notices for the 10 employees based on "job abandonment" and "violation of company policy." In affirming the judge's decision, the Board agreed that the work stoppage was protected, and the 10 employees were terminated and did not abandon their jobs. *Id.* at 2, fn. 6.

Where "the very conduct for which employees are disciplined is itself protected concerted activity," the appropriate analysis is found in *Burnup & Sims, Inc.*, 256 NLRB 965, 976 (1981). *CGLM, Inc.*, supra at fn. 2. A *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982) is not the appropriate analysis where the Section 8(a)(1) violation is not based on the employer's motive.³⁸ As Godus, Battenfield, and Fiato were terminated for engaging in a protected concerted work stoppage, "the only issue is whether [that] conduct lost the protection of the Act because . . . [it] crossed over the line separating protected and unprotected activity." *Phoenix Transit System*, 337 NLRB 510, 510 (2002), enfd. mem. 63 Fed.Appx. 524 (D.C. Cir. 2003). As demonstrated in

³⁸ Even under *Wright-Line*, Diegelman's discriminatory motive to punish the employee group for engaging in a protected work stoppage is clearly evident. She made that clear in her text messages to Amodio:

"That's too bad they are not heartfully sorry for doing this to me[,] my family, the staff[,] the customers[,] and my dad . . . fuck them."

the record, at no point in the sequence of events, did Godus, Battenfield, or Fiato engage in any misconduct causing them to lose the protection of the Act—nor does the Respondent assert as much. Not having been prohibited by Diegelman from entering the café on October 30, they sat there waiting to meet with her. They sat peacefully at tables, conversed among themselves, and were prepared to leave when the on-shift employees were ready to ready to close. Nor did any of them engage in misconduct by: (1) attempting to collect their paychecks in the kitchen—as employees had done in the past; (2) coming to the aid of Seyler when Amodio grabbed him by the neck or collar; (3) and defending themselves when Amodio grabbed Fiato's throat.

In addition to its unlawful removal from the schedule and termination of Godus, Battenfield, and Fiato, the Respondent violated Section 8(a)(1) in several other respects. First, by requesting their café keys and changing the locks, the Respondent unlawfully locked them out because they engaged in a protected work stoppage. See *America Ship Building Co.*, 380 U.S. 300, 85 S. Ct. 955 (1965) (employer unlawfully interferes with employees' Section 7 rights when it locks them out as a punishment for striking); *J.S. Troup Elec., Inc.*, 344 NLRB 1009 (2005) (employer unlawfully required employee to return his keys, van, cellphone, and to remove his personal tools from company van, thus making it impossible to perform his job). Moreover, Godus and Battenfield returned for their shifts without expressing any conditions. Diegelman responded by threatening to call the police if they did not leave, precluding any notion that the lockout was motivated by her desire to bargain with them regarding their workplace concerns. *Allen Storage and Moving Company Inc.*, 342 NLRB No. 44, slip op. at 1 (2004) ("For a lockout to be permissible, it must be for the 'sole purpose of brining economic pressure to bear in support of [the employer's] legitimate bargaining position.'")

Under the circumstances, the Respondent violated Section 8(a)(1) by terminating Godus, Battenfield, and Fiato, taking them off the schedule, and locking them out of the café. With respect to Schuster, however, that allegation is dismissed.

VI. THE RESPONDENT THREATENED TO HAVE EMPLOYEES ARRESTED FOR TRESPASS

On November 1, Diegelman threatened Godus when she arrived for her scheduled shift. Diegelman referred to Godus' protected activity as a crime and an attempt to "pull a palace coup to try to extort me." When Godus tried to respond, Diegelman said she was trespassing and threatened to call the police. On November 2, Diegelman also rebuffed Battenfield's attempt to work her scheduled shift. She told Battenfield that her demands had not been met and she would call the police if Battenfield did not leave. Later the same week, Diegelman reiterated those threats in letters mailed to Godus, Battenfield, Schuster, and Fiato, enclosing their paychecks and threatening police action and trespassing charges if any of them were to return to the café.

"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." *KSM Industries, Inc.*, 336 NLRB 133, 133 (2001) (citations omitted). Applying the Board's standard, Diegelman's threats to call the po-

lice and charge employees with trespass because they engaged in a protected work stoppage were clearly coercive. An employer violates Section 8(a)(1) when it responds to employees' protected activity by threatening to call the police. *Roadway Package System*, 302 NLRB 961 (1991) (unlawful threat to call police in response to protected employee handbilling activities); *All American Gourmet*, 292 NLRB 1111, 1113 at fn. 2 (1989) (same).

The Respondent asserts that Diegelman's threats were reasonable under the circumstances because she was merely waiting for the police investigation of the October 30 scuffle to conclude. To the contrary, coming in the wake of Amodio's coercive actions on October 30, the threats were the culmination of the Respondent's efforts to punish Godus, Battenfield, Schuster, and Fiato for engaging in a protected work stoppage. Under the circumstances, Diegelman's threats violated Section 8(a)(1).

CONCLUSIONS OF LAW

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

2. Frank Amodio is an agent of the Respondent within the meaning of Section 2(13) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by the following conduct:

(a) Discharging employees Samantha Godus, Alyssa Battenfield, and Reese Fiato in retaliation for their protected concerted activity;

(b) Physically restraining and assaulting Fiato;

(c) Installing a sign which read "Smile you're on camera" and informing employees they were being recorded;

(d) Removing Godus, Battenfield, and Fiato from the work schedule and locking them out of its facility;

(e) Threatening Godus, Schuster, Battenfield, and Fiato with trespassing charges and arrest if they returned to its facility;

(f) Refusing to allow Godus, Battenfield, Fiato, and Schuster onto its property.

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

5. All other alleged violations of the Act not specifically found are dismissed.

REMEDY

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

The Respondent, having discriminatory discharged Samantha Godus, Alyssa Battenfield, and Reese Fiato, must offer them reinstatement to their former positions or, if those positions no longer exists, to substantially equivalent position, without prejudice to their seniority or other rights or privileges previously enjoyed; to expunge any reference to the discharges from their files and records; and to notify them, in writing, that it has done so and that the discharges will not be used against them in any way. The Respondent shall also be ordered to make Godus, Battenfield, and Fiato whole, with interest, for any loss or earnings and other benefits suffered as a result of the unlawful discharges.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with the Board's decision in *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), the Respondent shall also be ordered to compensate Godus, Battenfield, and Fiato for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. In addition, in accordance with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall compensate Godus, Battenfield, and Fiato for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharges, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

As requested by the General Counsel, the Respondent will also be ordered to post the standard Board notice at the facility and distribute the notice electronically if the Respondent customarily communicates with its employees by such means.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁹

ORDER

The Respondent, Lancaster Coffee Co. & Café LLC, Lancaster, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engage in protected concerted activity.

(b) Physically restraining or assaulting employees in retaliation for their protected concerted activity.

(c) Threatening employees with trespassing and arrest in retaliation for their protected concerted activity.

(d) Making coercive statements regarding surveilling employees' protected concerted activity.

(e) Removing employees from their work schedules and lock-

ing them out of its facility in retaliation for their protected concerted activity.

(f) Refusing to allow employees onto its property in retaliation for their protected concerted activity.

(g) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Within 14 days from the date of this Order, offer Samantha Godus, Alyssa Battenfield, and Reese Fiato immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and/or privileges previously enjoyed.

(b) Within 14 days from the date of this Order make Godus, Battenfield, and Fiato whole for any direct or foreseeable pecuniary harms, loss of earnings and other benefits, suffered as a result of the discrimination against them.

(c) Compensate Godus, Battenfield, and Fiato for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 3 within 21 days of the date the backpay amounts are fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

(d) File with the Regional Director for Region 3, within 21 days of the date the backpay amounts are fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copies of the W-2 forms for Godus, Battenfield, and Fiato reflecting their backways awards.

(e) Within 14 days from the date of this Order, remove from its files any references

to the unlawful discharges of Godus, Battenfield, and Reese Fiato, and notify them in writing that this has been done, and that the discharges will not be used against them in any way.

(f) Preserve and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including electronic copies of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Lancaster, New York copies of the attached noticed marked "Appendix."⁴⁰ Copies of the notice, on forms provided by the Regional Director for Region 3, after

³⁹ 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.

⁴⁰ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is 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 facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pan-

demic, 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."

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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 30, 2022.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 26, 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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT physically restrain or assault you in retaliation for your protected concerted activities.

WE WILL NOT install signs which contain coercive statements threatening surveillance in retaliation for your protected concerted activities.

WE WILL NOT lock you out of our facility in retaliation for your protected concerted activities.

WE WILL NOT take you off the work schedule in retaliation for your protected concerted activities.

WE WILL NOT threaten you with trespassing charges in retaliation for your protected concerted activities.

WE WILL NOT threaten to call the police in retaliation for your protected concerted activities.

WE WILL NOT refuse to allow you onto our property in retaliation for your protected concerted activities.

WE WILL NOT discharge you in retaliation for your protected

concerted activities.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL allow employees to discuss wages, hours, and workplace safety without fear of reprisals.

WE WILL, within 14 days from the date of the Board's Order, offer Samantha Godus, Alyssa Battenfield, and Reese Fiato full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Samantha Godus, Alyssa Battenfield, and Reese Fiato whole for any loss of earnings and other benefits resulting from their unlawful terminations, less any net interim earnings, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful terminations, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Samantha Godus, Alyssa Battenfield, and Reese Fiato for the adverse tax consequences, if any, of receiving lump sum backpay awards, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

LANCASTER COFFEE CO. & CAFÉ LLC

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/03-CA-306479> 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.

