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Starbucks Corporation and Workers United.
Case 19–CA–293492

September 30, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On September 21, 2023, Administrative Law Judge Lisa D. Ross issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed reply briefs. In addition, the General Counsel and the Charging Party filed cross-exceptions with supporting briefs, the Respondent filed answering briefs, and the Charging Party filed a reply brief.

The National Labor Relations Board¹ 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 briefs² and has decided to affirm the judge's rulings,³ findings,⁴ and conclusions⁵ only to the extent consistent with this Decision and Order.⁶

This case involves allegations that the Respondent committed several unfair labor practices at its store on Eastlake Avenue in Seattle, Washington. We affirm the

judge's finding that the Respondent constructively discharged employee Myra Maza in violation of Section 8(a)(3) and (1) of the Act by requiring that she be available to work more than 1 day a week and not scheduling her to work for 3 months because she did not meet this availability requirement.⁷ As discussed more fully in the judge's decision, Maza began working for the Respondent at the Eastlake store in 2015 and became a shift supervisor in 2018. Maza regularly held two jobs during her tenure, and the Respondent occasionally allowed her to reduce her hours to 1 day a week. In January or February of 2020, Maza accepted another job, and the Respondent permitted her to reduce her work availability to 1 day per week. On March 17, 2022,⁸ Maza and another Eastlake employee informed Store Manager Vivian Gebben that the employees planned to seek a representation election. Shortly thereafter, Maza accepted a second job elsewhere, and she asked Gebben if she could reduce her availability to 1 day a week in order to work at her other job. Gebben told Maza that shift supervisors could not work 1 day per week for the Respondent, and therefore Maza would need to step down from her shift supervisor position to a barista position. Maza agreed to do so. On April 4, Gebben informed Maza that, due to the store's business needs, she needed to provide more than 1 day a week of availability. Maza answered that she could not increase her availability because of her second job. On April 11, Gebben stated that if Maza could not increase her availability beyond 1

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

² The General Counsel filed only unsupported exceptions to the judge's dismissal of the allegations that the Respondent violated Sec. 8(a)(3) and (1) of the Act by denying employee Lindsey Price's previously approved requests to take a monthlong leave of absence and by denying Price's request to reduce her availability. Accordingly, we shall disregard them under Sec. 102.46(a)(1)(ii) of the Board's Rules and Regulations. See *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005), enf'd. 456 F.3d 265 (1st Cir. 2006).

³ The General Counsel and the Charging Party have excepted to the judge's exclusion, on relevancy grounds, of certain testimony of employee Myra Maza, offered by the General Counsel regarding an incident in 2019. It is well established that the Board will affirm an evidentiary ruling of an administrative law judge unless that ruling constitutes an abuse of discretion. *Phillips 66 Co.*, 373 NLRB No. 1, slip op. at 1 fn. 1 (2023). After a careful review of the record, we find no abuse of discretion.

⁴ The Respondent, the General Counsel, and the Charging Party except to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing these findings.

⁵ We have amended the judge's conclusions of law consistent with our findings herein.

⁶ We have modified the judge's recommended Order to conform to the violations found and to the Board's standard remedial language, and in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997). In addition, in accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), vacated in part on other grounds 102 F.4th 727 (5th Cir. 2024), we have amended the make-whole remedy and modified the judge's recommended Order to provide that the Respondent shall also compensate Myra Maza for any other direct or foreseeable pecuniary harms incurred as a result of her unlawful constructive discharge, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.

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 *ibid*.

Compensation for these harms shall be calculated separately from taxable net backpay, 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). We have substituted a new notice to conform to the Order as modified.

⁷ We do not rely on the judge's citation to *North Texas Investment Group d/b/a Whitehawk Worldwide*, 371 NLRB No. 122, slip op. at 3 (2022). In the absence of relevant exceptions, that decision has no precedential value on the issue for which the judge cited it in this case.

⁸ All dates herein are in 2022 unless stated otherwise.

day per week, she would not be placed on the schedule and the Respondent's Partner Relations Board would make a decision about her continued employment. The Respondent did not schedule Maza to work after April 11, and Maza resigned on July 11.

By requiring that Maza be available to work more than 1 day a week, and by not scheduling her to work for 3 months because she did not meet this availability requirement, the Respondent imposed burdens on Maza that caused, as the Respondent should have foreseen, a change in working conditions so difficult or unpleasant as to force a resignation. And under a *Wright Line*⁹ analysis, the Respondent imposed the burdens on Maza because of the protected union activities of Maza and other Eastlake employees. The Respondent did not, as it contends, merely apply existing policies against Maza. The Respondent's written policy does not set forth a specific minimum number of hours that employees are required to be available for work; rather, it states that an employee "will be expected to make himself or herself available for work for a minimum number of days or hours each week. Availability that doesn't meet business needs may result in separation from employment." And, importantly, the Respondent has not established that the Eastlake store's business needs were different on April 4 than they were in early 2020 when the Respondent expressly allowed Maza to be available to work 1 day per week. Indeed, Nica Tovey, the Respondent's regional director responsible for overseeing the Eastlake store, testified that the business needs of the store had "stayed basically the same" since January 2020.¹⁰

Accordingly, we find that the Respondent's explanation that it had to require Maza to increase her availability due to the business needs of the Eastlake store is a pretext and that the protected union activity at the Eastlake store is the real reason for the Respondent imposing the burdens on

Maza beginning shortly after she and other store employees announced their intention to seek a representation election. As a result, we adopt the judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by constructively discharging Maza.¹¹ However, we reverse the judge's finding that the Respondent independently violated Section 8(a)(1) by threatening Maza. Although, as the judge found, the Respondent threatened Maza with stricter minimum availability requirements and with discharge if she did not satisfy stricter minimum availability requirements, these threats were not independent violations but, rather, established the basis for Maza's constructive discharge.¹²

We adopt the judge's dismissal of the complaint allegation that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Lindsey Price because we agree that the Respondent has met its burden to establish that it would have discharged Price even in the absence of protected activity.¹³ The record shows that Price committed a significant violation of the Respondent's safety protocols. Although the Respondent's Partner Relations representative recommended the issuance of a final written warning for this infraction, the record does not indicate whether this was a formal recommendation or simply a suggestion for further consideration. The Respondent's decision not to follow the recommendation in these circumstances does not demonstrate uncertainty as to whether Price would have been discharged for this offense absent her union activity. Given the severity of the violation and the absence of any contention that a violation of this magnitude cannot be a dischargeable offense, we agree with the judge that the Respondent established that it would have discharged Price even in the absence of her union activity. Finally, we adopt, for the reasons she stated, the judge's dismissal of the complaint allegations that the Respondent violated Section 8(a)(1) by threaten-

⁹ 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983).

¹⁰ On exception, the Respondent attempts to substantiate its claim of changed business needs by relying on testimony discredited by the judge.

¹¹ *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976) (explaining that the General Counsel can prove a constructive discharge violation by establishing (1) the burdens imposed on the employee caused, and were intended to cause, a change in working conditions so difficult or unpleasant as to force the employee to resign, and (2) that the burdens were imposed because of protected activity).

¹² Contrary to his colleagues, Member Prouty would affirm the judge's finding that the Respondent independently violated Sec. 8(a)(1) by threatening to impose stricter availability requirements and threatening to discharge Maza if she did not meet them. The complaint specifically alleged these statements as independent violations of Sec. 8(a)(1), and the Board has long recognized that threats of more stringent conditions or discharge are coercive in their own right, regardless of whether a discharge later occurs. Here, Maza would reasonably interpret the

Respondent's statements as warnings that it would impose a stricter availability requirement and discharge her for engaging in union activity, and such threats tend to coerce employees in the exercise of their Sec. 7 rights. See *Starbucks Corp.*, 373 NLRB No. 53, slip op. at 1 fn. 4 (2024) (employer violated Sec. 8(a)(1) by threatening that it would enforce work rules more strictly because of employees' union activities and by threatening that employees could be terminated as a result of that stricter enforcement). This conclusion is reinforced by the Board's decision in *Polynesian Hospitality Tours*, where the Board found both the employees' terminations and the employer's earlier threats of termination to be independent violations of the Act. 297 NLRB 228, 228 fn. 1 (1989), *enfd. sub. nom. PHT, Inc. v. NLRB*, 920 F.2d 71 (D.C. Cir. 1990), *cert. denied* 112 S.Ct. 55 (1991). *Polynesian Hospitality Tours* makes clear that threats do not become subsumed by a subsequent discriminatory discharge; rather, threats independently violate the Act because they themselves have a coercive tendency. For these reasons, Member Prouty would find that the threats alleged here are unlawful.

¹³ No exceptions were filed to the judge's finding that the General Counsel met her initial burden under *Wright Line*.

ing Price with stricter availability requirements and discharge.¹⁴

AMENDED CONCLUSIONS OF LAW

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

2. The Respondent violated Section 8(a)(3) and (1) of the Act when it constructively discharged Myra Maza by requiring her to increase her work availability.

3. The unfair labor practices committed by Respondent affect commerce within the meaning of Sections 2(6) and (7) of the Act.

ORDER

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

1. Cease and desist from

(a) Constructively discharging or otherwise discriminating against employees for supporting the Union or any other labor organization.

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

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

(a) Within 14 days from the date of this Order, offer Myra Maza full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Myra Maza whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of her unlawful constructive discharge, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Compensate Myra Maza for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(d) File with the Regional Director for Region 19, 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 Myra Maza's corresponding W-2 forms reflecting the backpay award.

(e) Within 14 days from the date of this Order, remove from its files any references to the unlawful constructive discharge of Myra Maza and, within 3 days thereafter, notify her in writing that this has been done and that the constructive discharge will not be used against her 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 facility on Eastlake Avenue in Seattle, Washington, a copy of the attached notice marked "Appendix."¹⁵ Copies of the notices, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, 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. The Respondent shall take reasonable steps 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 and former employees employed by the Respondent at that store at any time since April 11, 2022.

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

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

Dated, Washington, D.C. September 30, 2026

¹⁴ Because Member Prouty would find that the Respondent violated Sec. 8(a)(1) by threatening Maza, he would find it unnecessary to reach the General Counsel's cross-exceptions to the judge's dismissal of the complaint allegations that the Respondent violated Sec. 8(a)(1) by threatening Price in a similar manner.

¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notices 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."

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT constructively discharge or otherwise discriminate against you for supporting the Union or any other labor organization.

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

WE WILL, within 14 days from the date of the Board's Order, offer Myra Maza full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Myra Maza whole for any loss of earnings and other benefits suffered as a result of her unlawful constructive discharge, less any interim earnings, plus interest, and WE WILL also make her whole for any other direct or foreseeable pecuniary harms suffered as a result of her unlawful constructive discharge, including any

reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Myra Maza for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 19, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL file with the Regional Director for Region 19, 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 Myra Maza's corresponding W-2 forms reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the constructive discharge of Myra Maza, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the constructive discharge will not be used against her in any way.

STARBUCKS CORP.

The Board's decision can be found at www.nlr.gov/case/19-CA-293492 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.



Sarah McBride, Esq., for the General Counsel.

Renea Saade and Michael Moschel, Esqs. (Littler Mendelson),
for the Respondent.

Dimitri Iglitzin and Marina Multhaup, Esqs. (Bernard Iglitzin & Lavitt, LLP), for the Charging Party.

DECISION

STATEMENT OF THE CASE

LISA D. ROSS, Administrative Law Judge. On April 4, 2022, Workers United affiliated with the Service Employees International Union (Charging Party or the Union) filed an unfair labor practice (ULP) charge against Starbucks Corporation

(Respondent).¹ The Union amended the ULP charge four times, first on April 12, then on April 25, May 19, and June 10, 2022.

On August 17, 2022, the National Labor Relations Board's (NLRB or Board) Regional Director for Region 19 issued the instant complaint and notice of hearing.

The complaint alleges that Respondent violated Sections 8(a)(3) and/or (1) of the National Labor Relations Act (NLRA or the Act) when: (1) Store Manager Vivian Gebben (Gebben) denied Shift Supervisor Lindsay Price's (Price) allegedly previously approved request to take a two month-long leave of absence and denied Price's request to reduce her allegedly previously approved availability, (2) Gebben threatened to impose stricter conditions regarding minimum availability requirements in response to employees' union activity/support, (3) Gebben threatened Price and/or Shift Supervisor Myra Maza (Maza) with discharge if they did not change their work availability, (4) Respondent discharged Price on April 29, 2022, and (5) Respondent required Maza to increase her work availability which effectively caused her to be terminated.

Respondent denied all material allegations, arguing that it had legitimate, non-discriminatory business reasons for the actions it took that did not violate the Act in any way.

I conducted a trial in Seattle, Washington, on November 15 – 17, 2022, during which I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. After the trial, the General Counsel, Charging Party Union and Respondent timely filed post hearing briefs that I have read and duly considered.

Based on the entire record, including the pleadings, testimony of witnesses, my observations of their demeanor, the documents, the parties' stipulations, and the parties' briefs, I conclude that Respondent:

(1) Did Not Violate the Act when Price's allegedly previously approved request to take a two month-long leave of absence was denied and when Price's request to reduce her allegedly previously approved availability was denied (allegation #1), and

(2) Did Not Violate the Act when Respondent discharged Price on April 29, 2022 (allegation #4).

However, I conclude that Respondent:

(1) Did Not Violate the Act when Gebben allegedly threatened

to impose stricter conditions on Price regarding minimum availability requirements in response to her union activity/support but Violated the Act when Gebben threatened to impose stricter conditions on Maza regarding minimum availability requirements in response to her union activity/support (allegation #2),

(2) Did Not Violate the Act when Gebben allegedly threatened Price with discharge if she did not change her work availability but Violated the Act when Gebben threatened Maza with discharge if she did not change her work availability (allegation #3), and

(3) Violated the Act when Respondent required Maza to increase her work availability which effectively caused her to be terminated. (allegation #5).

FINDINGS OF FACT²

I. JURISDICTION

Starbucks Corporation is a publicly traded corporation whose headquarters are in Seattle, Washington. Respondent has 9,000+ retail restaurants throughout the United States where it sells coffee and food. Respondent employs approximately 220,000 employees, who it refers to as "partners." At issue herein are alleged unfair labor practices at Respondent's Eastlake Avenue (Eastlake) store in Seattle, Washington.

At all material times herein, Respondent derived gross revenues in excess of \$500,000. It also purchased and received at its Eastlake store goods valued in excess of \$50,000 directly from points outside of the state of Washington. Accordingly, Respondent admits, and I find that, it has been an employer engaged in commerce within the meaning of Sections 2(2), (6), (7) of the Act.

It is also undisputed, and I find, that Store Manager Gebben and District Manager Johnna Turvin (Turvin) have been supervisors of Respondent as defined in Section 2(11) of the Act and agents of Respondent as defined in Section 2(13) of the Act.

Lastly, it is undisputed, and I find, that Workers United, affiliated with the Service Employees International Union, has been/is a labor organization within the meaning of Section 2(5) of the Act.

¹ Case No. 19-CA-293492. See also GC Exh. 1(a). Abbreviations used in this decision are as follows: "Tr." for the Transcript, "Jt. Exh." for Joint Exhibits, "GC Exh." for the General Counsel's exhibits, "CP's Exh." for the Charging Party Union's Exhibits, and "R Exh." for Respondent's Exhibits.

² The Findings of Fact are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I relied upon witness demeanor. I also considered the context of the witness's testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence,

established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), rev'd. on other grounds 340 U.S. 474 (1951). Where necessary, specific credibility determinations are set forth below.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

Starbucks' Eastlake facility is a stand-alone coffee shop and café, located at 2344 Eastlake Avenue in Seattle, with a parking lot and floor to ceiling windows on the front and one side of the building.³ Two restrooms and an employee break room are located in the back of the facility.⁴ Neither the restrooms nor the break room are directly visible from the front of the store.

In the spring of 2022, approximately 12 – 13 employees worked at Respondent's Eastlake store as baristas and/or shift supervisors. Typically, approximately five to six employees were scheduled to work per shift. All the Eastlake baristas and shift supervisors reported to Store Manager Gebben. Gebben reported to District Manager Turvin, who reported to Regional Director Nica Tovey (Tovey).⁵

1. Respondent's Minimum Work Hours Policy.

It is undisputed, and the parties have stipulated, that Respondent maintains an employee handbook called a Partner Guide. All bargaining unit employees, which included baristas and shift supervisors, at the Eastlake Store are subject to the work rules set forth in the Partner Guide, effective from April 2020 to the present.⁶ The Partner Guide includes policies on work hours, schedules, leaves of absence, minimum work hours required and safety and security. Partners receive a copy of the Partner Guide at the time of their hire and are able to access the current version of the Guide through Respondent's intranet system known as the Partner Hub.⁷

In March and April of 2022, *all* employee partners were instructed, through the Partner Guide, that they needed to be available a minimum number of work hours consistent to meet the business needs of Respondent. However, partners were not informed of how many minimum hours that entailed as it varied depending upon the business needs of the Eastlake store.

Specifically, Respondent's Partner Guide states:

Starbucks provides retail hourly partners with the opportunity to work flexible hours. A partner's hours of work are largely dependent on the store's business needs and the partner's availability.

An hourly partner will be asked to provide a schedule of the days and hours available to work by filling out a Partner Availability Form. With this information and that of fellow partners, the store manager will create a weekly work schedule for the

store that balances partner availability and business needs.

There is no assurance or guarantee that hourly partners will receive their preferred hours or shifts, the same schedule each week, a minimum or maximum number of hours, or that a request for a schedule change will be approved. From time to time, a partner will also be expected to report to work for events such as promotions, store meetings or inventory at times that may fall outside the partner's days or hours of availability.

If a partner's availability changes, the partner should complete a new Partner Availability Form and give it to the manager for scheduling consideration. A partner will be expected to make himself or herself available for work for a minimum number of days or hours each week. Availability that doesn't meet business needs may result in separation from employment.

The store manager posts weekly work schedules in advance so partners can plan ahead. For this reason, a partner should submit a request for planned time off from work to the store manager for approval as far in advance as possible. Once a schedule is posted, the partner is responsible for reporting to work as scheduled. (Refer to the 'Attendance and Punctuality' section of this guide for requirements when a partner cannot report to work as scheduled, including responsibilities for finding a substitute.)

Assistant store managers and store managers are expected to be fully committed to the operations of their store. These positions are considered full-time and generally require at least 40 hours of work each week.⁸

As such, while it is undisputed that employees at Respondent's Eastlake store worked a variety of hours or days per week, including some employees only working one day a week prior to March/April 2022,⁹ I find that to the extent employees' hours/days varied, such scheduling occurred based on the business needs of Respondent *at that time*. It is undisputed that Respondent's management reserved the right to change the required minimum number of days or hours *at any time* based on the business needs of the Eastlake store.

2. Respondent's Procedures for Requesting Time Off.

It is undisputed that all employee partners have access to Respondent's PartnerHub in order to change their available hours.¹⁰ However, partners submitted their requests for time

³ Tr. at 3, Jt. Exh. 1, see also R. Exh. 2. Per the General Counsel's request, I take administrative (or judicial) notice of these facts which Respondent has stipulated to in Joint Exhibit 80 of Case 19-CA-294579, tried before Administrative Law Judge (Judge or ALJ) Mara Anzalone from October 25 – 28, 2022. FRE 201(b)(1) and (2) allows for the ALJ to take judicial notice of a fact within the court's jurisdiction, or which can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Similarly, the Board has held that it may take administrative notice of its own proceedings. *Shamrock Foods Co.*, 366 NLRB No. 117, slip op. at 3 n.14 (2018) (Board took administrative notice of a settlement agreement between the discriminatee and

the respondent in another case that was pending on exceptions before the Board), *enf'd. per curiam* 779 Fed. Appx. 752 (D.C. Cir. July 12, 2019).

⁴ Tr. at 33.

⁵ Tr. at 33-34, Jt. Exh. 1.

⁶ R. Exh. 4.

⁷ Jt. Exh. 1 at 3. It is also stipulated and undisputed that copies of the Partner Guide or other partner related policies could also be obtained by contacting any member of Respondent's Human Resources Team known as "Partner Resources" or the "Partner Resources Center." Id.

⁸ R. Exh. 4 at 17 (emphasis added).

⁹ Tr. at 39-41.

¹⁰ Tr. at 38.

off/vacation/extended leaves of absence to a third party leave of absence administrator, Sedgwick CMS (“Sedgwick”), who ultimately approved their leave requests.¹¹

3. Union Organizing at Respondent’s Eastlake Store.

After learning about Respondent’s Buffalo, New York employees joining Workers United in early 2022, employees at the Eastlake store began an organizing campaign to unionize.

It is undisputed that the Union sought to represent all regular full-time and regular part time baristas, shift supervisors and assistant store managers at Eastlake.¹²

On March 17, 2022, Barista Chloe Bennett (Bennett) and Shift Supervisor Maza informed Gebben that the Eastlake employees intended to unionize and file a petition for election.¹³ On March 18, 2022, the Union posted an open letter to Starbucks CEO Kevin Johnson (Johnson) and returning Interim CEO Howard Schultz (Schultz) on social media announcing the Eastlake store’s intent to unionize.¹⁴ Many Eastlake employees, including, *inter alia*, Bennett, Maza and Price, signed the letter to Respondent’s CEO supporting unionization. Although Gebben was equivocal on knowing Respondent’s CEO Schultz’s email address and testified that she could not recall whether she knew about the organizing efforts, the record belies her testimony, and as such, I find that Gebben was aware of the Eastlake employees’ intent to unionize.¹⁵

In any event, also on March 18, 2022, the Union filed a petition for election with the Board.¹⁶

The allegations in this matter involve Respondent’s actions taken against Eastlake Shift Supervisors Price and Maza during Eastlake employees’ union organizing efforts as follows.

B. Lindsay Price’s Allegations

1. Price’s Request for a Two-Month Personal Leave of Absence Was Partially Denied.

Based primarily on the documentary evidence in the record, I find the following facts:

As previously stated, it is undisputed that Respondent maintains a variety of leave policies and utilizes Sedgwick to process and approve leave requests.¹⁷ Although an employee’s management team *signs* a partner’s leave of absence form, Sedgwick ultimately *approves* the partner’s leave.

With respect to the amount of personal time that may be requested, Respondent’s U.S. Benefits Plan Description states in relevant part, that “[p]ersonal leave is limited to 30 days and only one [p]ersonal leave will be granted every three years . . .

[p]ersonal leave is not available. . . to extend a Career Coffee Break.”¹⁸

It is undisputed that on/about February 1, 2022, Price requested a personal leave of absence from March 22, 2022, to May 28, 2022, and submitted the requisite Personal Leave of Absence Request form to Sedgwick.¹⁹ Although Price testified that her two-month leave request had been approved since Gebben and District Manager Turvin signed the request, I find that Gebben’s and Turvin’s signatures only acknowledged *receipt* of Price’s request. Rather, Sedgwick was ultimately responsible for *approving* Price’s request.²⁰

On February 14, 2022, Sedgwick formally approved Price’s personal leave of absence request for March 22, 2022, through April 20, 2022.²¹ However, Sedgwick denied the remainder of Price’s leave since Price was ineligible for another month of leave (or Coffee Break) pursuant to Respondent’s Personal Leave Guidelines.²²

According to Price, and contrary to Respondent’s leave guidelines, Sedgwick informed her that she could take one month of leave from March 22 to April 20, 2022, then request another month for April 21 to May 28, 2022. Price then told Gebben what she intended to do, and according to Price, she was led to believe Gebben approved the second month of leave because Gebben blocked off March through May 2022 on the work schedule/calendar.

However, I do not find Price’s testimony credible on this point as the documentary letter from Sedgwick together with Respondent’s leave of absence policies on coffee breaks clearly made Price ineligible for a two-month leave of absence.²³ In fact, Price’s personal leave of absence form specifically states that, “Personal leave is limited to 30 consecutive calendar days and no more than one personal leave will be granted every three years.”²⁴

Moreover, Price is a long-standing employee, having worked for Respondent since May 2005, with a significant period of time serving as a Shift Supervisor,²⁵ so she should have been intimately familiar with Respondent’s leave and Coffee Break policies.

Lastly, Price was evasive on cross-examination when asked about her knowledge of Respondent’s rules, manuals and leave policies, where she oftentimes hedged and was equivocal in her answers to simple, direct questions about Respondent’s policies. However, Price specifically (and correctly) testified on direct examination as to Respondent’s leave of absence/Coffee Break policies and procedures, where she gave specific examples of

¹¹ Jt. Exh. 1.

¹² Jt. Exh. 5.

¹³ Tr. at 207-208, 274.

¹⁴ Tr. at 275, see also GC Exh 12.

¹⁵ A mail ballot election occurred on May 6, 2022, and a certificate of representation was issued on June 7, 2022. (Jt. Exhs. 1 and 6).

¹⁶ Jt. Exh. 1.

¹⁷ Jt. Exh. 1.

¹⁸ A Career Coffee Break is unpaid leave made available to a partner with an interest in taking an extended break to travel or pursue other interests including additional education. Jt. Exh. 7. A partner is eligible for a Career Coffee Break (which can be longer than 30 consecutive days) after completing 10 years of continuous employment with Star-

bucks. Id. A second Career Coffee Break is only available after seven consecutive years after the end of the previous Career Coffee Break. Id. Price previously took a Career Coffee Break in 2019, see Tr. at 41-42, and was therefore not eligible for a second coffee break until 2026. As such, Price was eligible for a one-month leave of absence in 2022.

¹⁹ Jt. Exh. 1, see also GC Exh. 2.

²⁰ Tr. at 43, see also GC Exh. 2 at 5, Jt. Exh. 7.

²¹ R. Exh. 9.

²² Id.

²³ GC Exh. 2 at 5, see also Jt. Exh. 7.

²⁴ Id.

²⁵ Tr. at 32, 47.

how she requested a four-month coffee break in 2019 as well as a two-month coffee break in January 2022, described submitting both requests to *Sedgwick* where *they* approved both requests before she submitted the approved requests to her management team.

As such, I find that Price knew that Sedgwick, not her management team, approved all leave requests, and her evasive answers on cross examination gave me the impression that she was reluctant to tell the complete truth regarding her knowledge of Respondent's leave policies and processes. All of these factors made her testimony less than fully credible.

Accordingly, I find that Price's leave of absence for May 22 through April 20, 2022, was approved by *Sedgwick* but the remainder of her request had been denied, because she was ineligible to extend her coffee break into May 2022. As such, I conclude that Gebben never "previously approved" Price's second month of leave.

2. The March 18, 2022, Eastlake Store Break In.

Based on the documentary evidence in the record together with the credible testimony of Barista Bennett, I find the following facts:

It is undisputed that, as a shift supervisor and keyholder, Price was responsible for, *inter alia*, opening and closing the Eastlake store and determining whether there had been a forced entry/burglary in the store.²⁶ It is undisputed, and Price admitted, that she was responsible for following Respondent's safety and security manual, Respondent's Opening and Closing standards and its Store Operations Manual.

Specifically, Respondent's Store Operations Manual states:

If the partners opening the store discover signs of burglary or forced entry upon arriving at the store, they must do the following:

- 1) Do not enter the store.
- 2) Call 911
- 3) Fully cooperate with the police. Inform the police that an inventory must be completed before determining the loss. . .
- 4) . . . call your DM; call in to report the incident within 24 hours of the incident.
- 5) Conduct a cash audit immediately after the police inspection . . .²⁷

Respondent's Store Opening Procedures further dictate that "[u]pon arrival . . . [i]f it is evident that a crime has occurred, do not enter the store. Leave immediately and call 911, contact the Global Security Operations Center [] and then call your district manager."²⁸

It is undisputed that, in/around 4:30 a.m. on March 18, 2022, four days before Price took her one-month leave, she and Bennett arrived to open the Store that morning.²⁹ Price reached for the door to unlock it and noticed that the entire lock was missing from the door. Minutes later, Bennett came behind Price and saw that the lock was missing. Although Price testified that she did not believe there had been a robbery/burglary or forced entry, since the store alarm had not sounded, I do not find Price's testimony credible.

Specifically, a photograph of the front door shows that the entire lock core was completely removed such that someone could push the door open.³⁰ Moreover, since the entire lock was missing one could not insert the key into the lock.³¹ As such, I find that, at minimum, a reasonable prudent person would suspect that something akin to an attempted forced entry occurred.

Nevertheless, Price opened the door, and although she testified no alarm sounded, I believe Bennett who credibly testified that, as soon as Price pulled on the door to open it, the alarm sounded. In any event, Price and Bennett discussed whether they should follow the safety protocols and whether Bennett felt comfortable entering the store. Bennett gave the impression to Price that she was uncomfortable entering the store. At that point, Price told Bennett to remain outside by the door, and be ready to call 911 while Price entered and surveyed the store.³² While neither Price nor Bennett saw any movement inside the front of the store, Price admitted at trial that she had no way of knowing whether someone was in the back of store or in one of the two restrooms before entering the Store.³³

At this point, Price walked around the store and called out to announce herself but heard nothing. Although Price testified that the alarm had not sounded, curiously she testified that she went to the alarm but did nothing since it had not gone off. However, I do not find Price credible on this point since it is implausible that someone would check an alarm that is not sounding. Rather, Price's actions further corroborate Bennett's credible testimony that Price went to the alarm to disarm it because it was going off.

In any event, Price then checked the restrooms and breakroom in the rear of the store. Price did not notice anything unusual so she returned to the front, instructed Bennett to enter and the two opened the store.³⁴ Thereafter, Price called Respondent's facilities department to report the missing front door lock. It is undisputed that Price did not contact Gebben or Turvin, did not call 911/the police or follow any other of Respondent's safety procedures when a keyholder sees evidence of a forced entry/burglary.³⁵

When Gebben arrived at the store for her shift around 7:00-7:30 a.m., she saw the missing front door lock. Price then told

the situation. According to Price, she did not contact Gebben, because Gebben oftentimes did not answer her phone in the early morning. Price did not contact Turvin since she did not have Turvin's number. Finally, Price explained that she did not call the police, because, according to Price, the police had a tendency to "take too long" and be non-responsive to non-emergency calls in similar circumstances. However, even considering Price's own rationale, which she gave in her statement and in her testimony, I find that she failed to follow protocol when dealing with a suspected break-in.

²⁶ Tr. at 31, 130, 133, see also Jt. Exh. 1 at 3 (internal page).

²⁷ R. Exh. 6.

²⁸ Id.

²⁹ Tr. at 61.

³⁰ R. Exh. 7.

³¹ Id., see also Tr. at 551.

³² Tr. at 62, 141, 150.

³³ Tr. at 141-142.

³⁴ Tr. at 62-63.

³⁵ For her part, Price testified that, other than facilities, she never notified anyone else about the incident because Price felt like she handled

Gebben about the incident that morning.³⁶ Gebben was displeased with Price's actions. Gebben reported the incident and Turvin began investigating what occurred, including asking Price to provide a statement.³⁷

In her written statement, Price admitted that it was her decision to enter the store instead of calling 911 and that she asked Bennett to be ready to call 911 "in case there was someone in [the Store]."³⁸ Price also confirmed why she failed to call 911/the police. Later that day, a coworker told Price that something was missing from the backroom which ultimately turned out to be employee personnel files.³⁹

Gebben and Turvin also provided statements, where Turvin summarized her account of what she learned from partners during a visit later that afternoon.

While there is conflicting testimony about whether Price continued working in the days after the break-in and before her first month's leave of absence, it is undisputed that Price worked from March 19 to March 21, 2022, prior to her scheduled leave on March 22, 2022. Price understood she was under review at that time, but she was still allowed to work as usual.⁴⁰ Although Gebben testified that she granted Price's request to start her leave one day early (due to the stress of the break-in and Price realizing she was under investigation and could be disciplined), regardless Price officially began her month-long personal leave on/about March 22, 2022.⁴¹

It is undisputed that, after investigating the incident, Respondent determined that the Eastlake store had been broken into and that employee partner personnel files were stolen.⁴² The investigation also confirmed that Price had knowingly and intentionally violated safety protocols since she had previously followed Respondent's safety protocols in October 2021.

In making the above findings, I heavily relied on the documentary evidence in the record, together with Bennett's testimony, as it was consistent with documentary evidence, and Gebben's testimony where it was consistent with the documentary evidence. I did not rely on Price's testimony as I found it less than credible as noted above.

³⁶ Tr. at 65.

³⁷ Tr. at 152, 437, see also R. Exh. 8. Bennett testified that she contacted Turvin to provide her statement but Turvin never followed up with her. It is undisputed that Bennett ultimately provided her statement about what happened on the morning of March 18, 2022. See Tr. at 219, 221, see also GC Exh. 11.

³⁸ R. Exh. 8.

³⁹ Id., see also Jt. Exh. 1 at 3 (internal page). Price also tried to distinguish her actions during the March 18 break in from her actions during a prior break in on October 17, 2021, when she followed Respondent's safety protocols. Price testified on redirect that, on October 17, 2021, she, and later Bennett, arrived to open the store. Price testified that, when she arrived, she saw that a cinder block had been thrown through front door window, there was glass everywhere, and she heard the store alarm sounding. According to Price, it was clear that a break in occurred and that it was unsafe to enter the store. Price followed all of Respondent's safety protocols on that occasion. Tr. at 134-135, 137. Price explained that, contrary to the October 2021 burglary, it was not clearly evident that the store had been burglarized on March 18, 2022, since the door "was unlocked," and nothing looked out of place, which is why she entered the store without following Respondent's safety protocols. However, I do not find Price's testimony credible since the record clearly reveals that

3. Price is Required to Provide Minimum Availability.

Based primarily on the documentary evidence in the record, I find the following facts:

It is undisputed that, since Price's second month of leave (from April 21 to May 28, 2022) had been denied by *Sedgwick*, Price's second month's leave request was now pending as "time off" on the Eastlake work schedule/calendar.⁴³

On/about April 1, 2022, Gebben texted Price, while Price was still on leave, informing Price that her second month of "time off" was denied due to the amount of turnover at the Eastlake store. However, Respondent did not present evidence documenting the turnover at the Eastlake store in April 2022.

In any event, in their text discussion, Gebben also asked Price for her availability in April/May 2022. In response, Price told Gebben that, since she was finishing up classes and final exams for school, she could only work 4 hours a week but could return to her regular work hours after exams concluded in late May 2022. Price and Gebben scheduled a time to meet in person to discuss Price's availability.⁴⁴

Gebben and Price met in the backroom of the store on April 4, 2022. During their meeting, Gebben told Price that she could not work 4 hours per week in April/May in lieu of time off, rather Price needed to be *available* a minimum of 12 hours per week since Price was not on a leave of absence. When Price asked why she was being required to work a minimum of 12 hour per week, Gebben replied that it was due to the needs of the store at the time. Respondent did not present evidence documenting the business needs of the Store for late April/May 2022.

When Price reiterated that she could not *work* a minimum of 12 hours per week due to school, Gebben told Price that if she could not be *available* for that minimum amount, Price could not be scheduled for work.⁴⁵ While there was conflicting testimony that Gebben never specifically told Price that she would be *terminated* if she could not increase her availability, I find that, even if Gebben did not use the word "termination," the effect was the same: that is, if Price could not be *available* a minimum of 12 hours per week, then Price would not be scheduled to work

the entire front door lock was missing from the door, not simply that the door was unlocked. Moreover, any reasonable person arriving at a store to find the entire front door lock missing and lying on the ground and the store alarm sounding would believe something was amiss, at minimum, and that there was evidence of a potential break in, at maximum.

⁴⁰ Tr. at 69-70.

⁴¹ Tr. at 437, see also R. Exh. 14.

⁴² Tr. at 143, see also R. Exh. 13.

⁴³ Tr. at 47.

⁴⁴ GC Exh. 3.

⁴⁵ Tr. at 168-169. Although Price testified that she had been able to work less than 12 hours per week in the past, there was no evidence in the record that Price was allowed to work less hours without regard to the business needs of the Store *at that time*. Price also testified that she had seen other partners work a minimum of 4 hours per week in the past. However, the record reveals that those individuals which Price refers are not comparable as they were baristas, not shift supervisors. Lastly, while Price testified that she was unaware of the minimum requirement to work 12 hours per week as of April 2022, I find that Price *was* aware of the minimum availability policy where management could require partners to work a minimum number of days or hours per week to meet the needs of the Eastlake store at the time. Tr. at 40, 59, see also R. Exh. 4 at 17.

due to the needs of the Eastlake store. Nevertheless, it is undisputed, and Price admitted, that Gebben asked her to be *available, not work*, a minimum of 12 hours per week, meaning Price could potentially work less than 12 hours per week.

Price testified that Respondent previously allowed other employees to reduce their availability down to one day per week when she was not allowed to. However, while Price could see partners' *scheduled* hours, she had no personal knowledge of a partner's *availability*.⁴⁶

Rather, Gebben explained that, on occasion, former Barista Brenna Robinson (Robinson) *worked* only one shift per week but her minimum *availability* was at least three days per week. Similarly, former Barista Elizabeth Hall (Hall) occasionally *worked* only one day a week, but she had an *availability* of at least two days per week.⁴⁷ In contrast, Price told Gebben she was only *available* to work 4 hours per week, much less availability than Robinson or Hall.

Moreover, I find that none of these employees, who were Baristas, are comparable to Price, a Shift Supervisor, since Shift Supervisors are required to have wider availability than Baristas because there are fewer Shift Supervisors at the Store, and Shift Supervisors serve as the managers on duty when the Store Manager is not there.⁴⁸ Accordingly, I do not find Robinson or Hall comparable to Price.

In any case, it is undisputed that, on April 10, Price emailed Gebben, memorializing their April 4, meeting and reiterating that she would not resign when faced with the choice of having to increase her availability to 12 hours per week or resign. However, Price reiterated that she could only be available for 4 hours per week as she previously indicated.⁴⁹

In making the above findings, I again relied primarily on the documentary evidence in the record which corroborated Price's and Gebben's testimony.

4. Respondent Terminated Price on April 29, 2022.

Again, based on the documentary evidence together with the testimony of Price and Regional Manager Tovey, I find the following facts:

Gebben did not reply to Price's April 10 email concerning Price's minimum availability since it had not changed from 4 hours per week.⁵⁰ Meanwhile, Price had not heard anything about whether she would be disciplined over her actions involving the March 18 break in.

Approximately a week prior to April 29, 2022, Gebben contacted Price asking her to come into the store for a meeting on April 29. On April 29, Price attended a meeting at the Eastlake store with Gebben, Turvin and District Manager Amber Molen (Molen).⁵¹ At the start of the meeting, Turvin informed Price that, due to Price's handling of the March 18 break-in, Respondent was terminating her employment. Respondent did not ask Price any further questions about the incident and Price did not reply. Turvin handed Price her termination notice, Price turned

in her store keys, and the meeting ended.⁵² Price left the store without comment.

However, on the one hand, I note that Respondent's termination decision was contrary to Respondent's Partner Relations Consultant's recommendation that Price be issued a final written warning.⁵³ Interestingly, Turvin noted in the Consultant's email that Respondent was seeking to consult with its employment attorneys. In explaining Turvin's comment at trial, Regional Manager Tovey testified that management sought counsel, "because the store was within, at that point, some [union] petition activity."⁵⁴ On the other hand, I note there is no evidence in the record that Respondent's management are required to follow Partner Relations' recommendations.

Be that as it may, I find that Price was terminated for knowingly failing to follow Respondent's safety protocols during the March 18, 2022, break in.

C. Myra Maza's Allegations

1. Maza Required to Increase her Work Availability Which Effectively Caused Her to be Terminated.

Based primarily on the testimony of Shift Supervisor Mara coupled with the documentary evidence in the record, I find the following facts:

a. Was a Shift Supervisor for Respondent and One of the Union Organizers at the Eastlake store.

Maza worked for Respondent at the Eastlake store for over six years, from 2015 until April of 2022, serving as a shift supervisor for the last four years of her employment. Throughout her tenure, Maza regularly worked two jobs in past years so her outside employment occasionally caused Maza to reduce her hours with Respondent to one day a week.⁵⁵

It is undisputed that Maza was one of the main union organizers at the Eastlake store. Maza often helped employees learn about the union and she assisted with filing the union petition on March 18, 2022. It is further undisputed that, prior to filing the union petition, Maza informed Gebben and Respondent's upper management about Eastlake employees wanting to unionize.⁵⁶ Because I find Maza's testimony credible, and Gebben did not dispute Maza's testimony on this point, I conclude that Gebben and Respondent's upper management were aware of Maza's and the Eastlake employees' union activity.

b. Maza Required to Have Minimum Availability.

Based on the credible testimony of Maza, I find the following facts:

Typically, as a shift supervisor, Maza worked mostly full time, Sunday through Thursdays.

It is undisputed that, in late February 2022, Maza initiated a

⁴⁶ Tr. at 39, 122.

⁴⁷ Tr. at 551-552.

⁴⁸ Tr. at 556-557.

⁴⁹ Tr. at 60, 71, see also GC Exhs. 5-6.

⁵⁰ GC Exh. 6.

⁵¹ Ms. Molen is not involved in the issues in this matter.

⁵² Tr. at 74, see also GC Exh. 7.

⁵³ GC Exh. 13.

⁵⁴ Id., see also Tr. at 537.

⁵⁵ Tr. at 279.

⁵⁶ GC Exh. 12 at 2.

request for personal leave to begin on June 1, 2022.⁵⁷ Maza's request was submitted to Sedgwick for processing and approval.⁵⁸

On February 23, 2022, Sedgwick requested Maza provide additional information so they could evaluate her personal leave request for June 2022.⁵⁹

Meanwhile, in late March 2022, Maza accepted outside employment so she requested to reduce her work hours. According to Maza, she emailed Gebben requesting to change her availability to one day per week.⁶⁰

On March 28, 2022, Gebben met with Maza at the Eastlake store to discuss her availability. Maza asked Gebben whether she could move down to one day per week due to her second job. While Maza testified that Gebben orally approved her request, I find that Gebben was simply discussing Maza's availability with her, primarily because Gebben and Maza continued to discuss the parameters of Maza's availability (as set forth below).⁶¹

When Maza asked to work on Sundays as her one day per week, Gebben replied that Maza would have to step down to a Barista since shift supervisors could not work one day per week.⁶² Although Gebben testified that Maza never specifically told her that she would step down to a barista, I believe Maza's testimony that she agreed to do so.⁶³

In any event, while Maza and Gebben attempted to work out Maza's availability, Sedgwick made multiple attempts to contact Maza regarding additional information needed to evaluate her leave request for June 1, 2022.⁶⁴ It is undisputed that Maza did not respond to Sedgwick's request.

On April 4, 2022, Gebben and Maza met again in the employee back room of the Eastlake store. During their conversation, Gebben told Maza that she could not work one day per week due to the needs of the Eastlake store; rather, Maza needed to be *available* a minimum number of hours. However, Respondent did not provide any evidence to substantiate the Eastlake store's business needs in April 2022.

Nevertheless, Maza told Gebben that she thought the denial of her request was in retaliation for her efforts at unionizing since she previously requested and had been allowed to reduce her hours in the past. Gebben denied the denial had anything to do with the Union.⁶⁵

On April 8, 2022, Maza emailed Gebben summarizing their April 4 conversation.⁶⁶ Even though Maza testified that she never received any written policies regarding being available a minimum number of hours,⁶⁷ she admitted that she signed the Partner Guide when she was hired that listed the minimum availability requirements.⁶⁸ Said information was also available on Re-

spondent's Partner Hub. Nevertheless, Maza also admitted that *availability* and *being scheduled for work* are different and acknowledged that management used the availability form together with the needs of store to determine a partner's schedule.

In any event, because Maza was unable to increase her availability beyond one day per week, she was not scheduled to work.

In making the above findings, I relied on Maza's testimony as it was direct and straightforward. She was able to recall many of the salient facts from memory. Even when confronted with evidence that conflicted with Maza's trial testimony, she was quick to correct the discrepancy which gave me the impression that she was most interested in telling the truth.

Gebben, on the other hand, was evasive and appeared hesitant to answer questions, particularly on cross examination and especially during testimony concerning whether Maza told her about the employees' intent to unionize (see below). Oftentimes, I noticed that Gebben appeared as if she did not know or understand very simple questions asked of her on cross which left me with the impression that she was hesitant to reveal the truth. Overall, her demeanor gave me the impression that she was reluctant to testify truthfully if it somehow disadvantaged Respondent, and accordingly, I found Gebben less than fully credible.

c. The Eastlake Store Strike and Maza Resigns Her Employment with Respondent.

It is undisputed that Maza was not included on the schedule after April 11.⁶⁹ On April 11, during her last day working in the Eastlake store, Maza again met with Gebben to discuss her availability. When Maza filled out a new availability form during the meeting, indicating she was still only available on Sundays, Gebben told Maza that since Maza could not increase her availability or quit, Gebben could not schedule her and the Partner Relations Board would make a decision about her employment.

On April 15, 2022, while Price was on leave pending potential discipline for her handling of the March 18 break in, and Maza was unscheduled to work, the Eastlake employees held an all-day unfair labor practice strike.⁷⁰ To prepare for the strike, Maza and other employees emailed Gebben to alert her to the pending strike. Maza also emailed Respondent a list of employee demands.⁷¹ Employees organized the strike to call attention to Respondent's treatment of Price and Maza. Approximately 20–25 employee participated in the strike, including Maza and Price, where they held signs in support of the Union, and chanted as they marched in front of the store.

The strike caught the attention of local and national media.⁷²

⁵⁷ Jt. Exh. 9, R. Exh. 12. Although Maza initially denied submitting a request for personal leave to Sedgwick, she ultimately admitted to the submission only after being shown the personal leave request form on the stand. While this leave request was discussed at trial, I find that it had no bearing on Maza's request to reduce her availability and why it was denied since the request itself was for leave beginning on June 1, 2022, and Maza's request to reduce her work hours, the subject of this case, occurred in March 2022, during the same time she was assisting the Union with organizing.

⁵⁸ Tr. at 298–299, 365–366, see also GC Exh. 26.

⁵⁹ R. Exh. 26 at 4 (internal page).

⁶⁰ Tr. at 80, 281.

⁶¹ Tr. at 281–282, 342.

⁶² Tr. at 282, 376.

⁶³ Tr. at 283.

⁶⁴ Jt. Exhs. 9–10, R. Exh. 26.

⁶⁵ Tr. at 284.

⁶⁶ Jt. Exh. 12(a).

⁶⁷ Tr. at 283.

⁶⁸ See Jt. Exh. 2.

⁶⁹ Tr. at 291–292.

⁷⁰ Tr. at 77, 231.

⁷¹ GC Exhs. 18–19.

⁷² GC Exhs. 8–10.

Photographs of Price and Maza were included in the reporting. National outlet *Business Insider* included a feature on Price along with a photo and an interview, as well as a response from Respondent.⁷³ Maza was featured on local television news stations KIRO 7 and KING 5 giving interviews from the strike line.⁷⁴

Meanwhile, Sedgwick continued to contact Maza in order to get the additional information needed to evaluate her June 1, 2022, leave request. Maza testified that she abandoned her June 1 personal leave request after she had not been scheduled to work since April. However, because Sedgwick had neither received any of the requested information from Maza nor information that Maza had withdrawn her leave request, on July 6, 2022, Sedgwick informed Maza that her June 1, 2022, request for personal leave request had been denied because she failed to provide necessary documentation.⁷⁵

After receiving Sedgwick's July 6 letter, coupled with the fact that Maza had not been scheduled to work since April 11, it is undisputed that, on July 11, 2022, Maza emailed Respondent resigning from her position.⁷⁶

In making the above findings, I relied on Maza's testimony which was corroborated by the documentary evidence. Again, Maza was direct and straight forward in her testimony, and even where her testimony conflicted the documentary evidence, she was forthright to admit her error and explained the discrepancy. In sum, I found that Maza was committed to telling the truth, and thus, found her credible.

DISCUSSION AND ANALYSIS

In the complaint, the General Counsel essentially alleges that Respondent took multiple adverse actions against Price and/or Maza in retaliation for their participation in union activity in violation of Sections 8(a)(3) and/or (1) of Act. I will take each issue in turn.

I. RESPONDENT DID NOT VIOLATE SECTIONS 8(A)(3) AND (1) OF THE ACT WHEN PRICE'S ALLEGEDLY PREVIOUSLY APPROVED PRICE'S REQUEST TO TAKE A TWO-MONTH LEAVE OF ABSENCE WAS DENIED OR WHEN PRICE'S REQUEST TO REDUCE HER ALLEGEDLY PREVIOUSLY APPROVED AVAILABILITY WAS DENIED (ALLEGATION #1)

A. Legal Standard

Mixed motive cases, like the one in this case, are those where it appears that unlawful considerations were a motivating factor for the adverse action but where the record supports the potential existence of one or more legitimate justifications for the decision. To assess whether an adverse personnel action against an

employee was taken in retaliation for their union activity, the Board applies the mixed motive analysis set forth in *Wright Line*, 251 NLRB 1083 (1980).⁷⁷

Under *Wright Line*, the General Counsel must first demonstrate, by a preponderance of the evidence, that Price's protected activity was a motivating factor in her denial of her two-month leave of absence and/or denial of her change in availability request. The General Counsel satisfies this initial burden by showing: (1) Price's protected activity; (2) Respondent's knowledge of such activity; and (3) animus.

Recently, the Board clarified element three of the General Counsel's *prima facie* case, holding that, in order to prove animus sufficient to carry the General Counsel's initial burden, the General Counsel must establish a causal connection "between the employee's protected activity and the employer's adverse action against the employee."⁷⁸ This is not an additional element of the General Counsel's *prima facie* case.⁷⁹ Rather, in order to demonstrate that Respondent's denial of Price's leave and availability request was motivated by her protected concerted activity, the General Counsel must establish a link or nexus between Price's protected activity and Respondent's denial of leave of absence request and/or her request to change her availability.⁸⁰

Once the General Counsel meets her initial burden under *Wright Line*, the burden of persuasion shifts to Respondent to prove that it would have denied Price's leave and availability requests even absent her protected activity.⁸¹ To do this, Respondent cannot simply present a legitimate reason for its adverse action; rather, it must demonstrate by a preponderance of the evidence that it would have taken the same action in the absence of the protected conduct.⁸² If the employer's proffered reasons are pretextual (i.e., either false or not actually relied on), the employer fails by definition to show that it would have taken the same action regardless of the protected conduct.⁸³

On the other hand, further analysis is required if the defense is one of "dual motivation," that is, Respondent defends that, even if an invalid reason might have played some part in its motivation, Respondent would have taken the same action against Price for permissible reasons.⁸⁴

B. Discussion

Here, after reviewing all of the documentary evidence, I noticed that counsel for the General Counsel failed to address Price's denial of her leave and availability requests in her post-hearing brief. Even if she had, I conclude that the General Counsel failed to establish her *prima facie* showing.

First, although Price engaged in protected concerted activity when, on/about March 17-18, 2023, she signed a letter addressed

⁷³ GC Exh. 10.

⁷⁴ Tr. at 321. After the strike, a mail ballot election was conducted. The Union was certified as the employee's bargaining representative on June 7, 2022. See Jt. Exhs. 1, 6.

⁷⁵ Jt. Exh. 11.

⁷⁶ Jt. Exh. 12(a).

⁷⁷ *Wright Line*, 251 NLRB 1083, 1088-89 (1980), enf'd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

⁷⁸ See, *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120 at 1 (2019).

⁷⁹ See *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 7-11 (Aug. 25, 2023).

⁸⁰ Id.

⁸¹ See, e.g., *Mesker Door*, 357 NLRB 591, 592 (2011); *Wright Line*, 251 NLRB at 1089.

⁸² *Bruce Packing Co.*, 357 NLRB 1084, 1086-1087 (2011); see also *W.F. Bolin Co.*, 311 NLRB 1118, 1119 (1993), petition for review denied 70 F.3d 863 (6th Cir. 1995), enf'd. mem. 99 F.3d 1139 (6th Cir. 1996).

⁸³ *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007).

⁸⁴ See *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

to Respondent's CEO joining her colleagues in favor of unionizing the Eastlake store, her protected activity occurred *after* she submitted her two-month leave request. Specifically, Price requested a two-month leave of absence on February 1, 2022, Sedgwick denied the second month of leave on February 14, 2022, and Price engaged in protected, concerted activity in/around March 17, 2022. Accordingly, Price had not yet engaged in any protected, concerted activity for Respondent to unlawfully retaliate against.

Moreover, I conclude that Price's two-month leave request was never "previously approved." Rather, the record shows, and Price was clearly aware, that *Sedgwick*, a third-party leave administrator, approved only the first month of Price's leave and denied the second month, because Price was ineligible to take two consecutive months off. Thus, *Respondent* had not taken any adverse action against Price, much less taken any adverse action due to her union activity, as *Sedgwick*, not Respondent, denied her second month of leave. Again, all of these actions occurred prior to Price's union activity. Since General Counsel failed to proffer any argument that Price's leave request was retaliatory, I find that counsel for the General Counsel failed to prove her *prima facie* case regarding this issue.

With regard to Price's change of availability after her second month of time off was denied, I conclude that Respondent never took an adverse action against Price since the evidence demonstrates that her change of availability was never previously approved. Rather, the record clearly indicates that her second month of leave was denied by Sedgwick on February 14, 2022, and, as a result, Price's request had been marked as pending time off on Respondent's work schedule. The record is devoid of any evidence that Gebben previously approved Price's second month of leave.

Moreover, General Counsel presented no argument in support of her *prima facie* case that Price's request to reduce her hours was motivated by her union activity. Even if counsel had made this argument in her post-hearing brief, counsel would have been unable to satisfy the last element of her *prima facie* case.

First, the evidence reveals that Price engaged in union activity when, on March 17 or 18 2022, she signed a letter sent to Respondent's CEO joining with her colleagues' intent to unionize (element one). Price requested to change of availability on/about April 1, 2022, when Gebben asked about Price's availability to return to work when Price's second month of leave was denied.

The problem with the General Counsel's case is two-fold. One, while I find that Gebben was *generally* aware of the employees' intent to unionize, there is no clear evidence that Gebben *specifically* knew that Price signed the letter of intent to unionize. As such, element two of the General Counsel's *prima facie* case is not satisfied.

Next, regarding element three, there is no independent (direct or inferred) evidence of union animus at the time Price asked to change her availability. General Counsel argues that, under *Grand Rapids Press of Booth Newspapers*, 327 NLRB 393, 394-95 (1998), I should infer animus from other ALJ's findings

in other cases against Starbucks.⁸⁵ However, counsel did not point to a similarly situated case against Starbucks for which I could infer animus. Moreover, the judge in *Grand Rapids* inferred animus from another case that was against the same respondent with similar allegations as in the *Grand Rapids* case. I do not have that situation in this case.

Lastly, to the extent that the General Counsel argued that Respondent allowed other employees to reduce their hours/days per week in the past but not Price, I find that those instances are not comparable with Price. Specifically, the record reveals that several employees, who were Baristas, were *scheduled* to work either one shift per week or one day per week, but their minimum *availability* exceeded Price's. Moreover, Baristas are not comparable with Shift Supervisors, since Shift Supervisors, like Price, typically work longer shifts than Baristas, because they serve as on-duty managers when the Store manager is off duty. As such, Shift Supervisors need to have wider availability than Baristas. General Counsel could not point to any shift supervisor requesting a one day per week *availability* as Price and was *scheduled* to work based on that limited availability.

Accordingly, the record reveals that: (1) on March 17/18, 2022, Price signed her name in support of unionizing the Eastlake store, (2) Gebben generally knew that employees wanted to unionize but the evidence is unclear whether Gebben specifically saw Price's name on the letter, and (3) Price asked to change her availability in/around April 1, 2022, which was denied due to staff turnover. Since the General Counsel has the burden, *by the preponderance of evidence*, to show that Price's union activity was the *motivating factor* in Price's denial of her change of availability request, I do not find that counsel met her burden on this evidence.

Accordingly, I conclude that Respondent did not violate the Act in allegedly denying Price's previously approved request for a two-month leave of absence and did not violate the Act in allegedly denying Price's previously approved request to change her availability.

II. RESPONDENT DID NOT VIOLATE SECTIONS 8(A) (3) AND/OR (1) OF THE ACT WHEN RESPONDENT DISCHARGED PRICE ON APRIL 29, 2022 (ALLEGATION #4)

A. Legal Standard

The same mixed motive analysis set forth in Section I above applies to Price's termination.

B. Discussion

With regard to Price's termination, I conclude that counsel for the General Counsel established her *prima facie* showing. First, Price engaged in protected concerted activity when she signed a letter around March 17, 2022, in favor of unionizing the Eastlake store, and when she participated in the all-day strike in front of the store on April 15, 2022 (element one).

Second, although it is doubtful that Gebben knew that Price signed her name on the union petition letter, I find that Gebben knew about the one-day strike on April 15, 2022, when Maza

⁸⁵ *Grand Rapids Press of Booth Newspapers*, 327 NLRB 393, 394-95 (1998)(trial judge relied on another ALJ's findings in an earlier case as evidence of animus), *enfd. mem.* 215 F.3d 1327 (6th Cir. 2000).

told her about it and Gebben saw employees, including Price, picketing in front of the store. Furthermore, Price was featured on the local news picketing in front of the store (element two).

Finally, the close timing between Price's union activity and her termination – all of which occurred within one month – supports an inference that Price's union activity was a motivating factor in her termination (element three).⁸⁶

Once the General Counsel satisfies her initial burden that Price's protected activity was a motivating factor in Respondent's decision to terminate her employment, the burden of persuasion shifts to Respondent to prove that it would have terminated Price despite her protected activity. Here, I find that Respondent met its burden.

The record demonstrates that Price was terminated because she failed to follow Respondent's safety protocols during the March 18, 2022, break in. Specifically, Price admitted, and the record is replete with evidence, that Price failed to follow Respondent's safety protocols when a shift supervisor sees evidence of a forced entry/burglary at the store. The evidence shows that, on March 18, 2022, Price arrived at the store to find the front door lock missing and lying on the ground. Although Price testified that the door was "unlocked," and did not believe there had been a burglary based on the circumstances, the record evidence belies Price's testimony.

Rather, I found Price's testimony incredible on this point since Bennett, who accompanied Price on March 18, credibly testified that she and Price discussed whether to follow protocol or enter the Store. Ultimately, Price made a judgment call to enter, even though she could not safely determine whether anyone was in the Store, then told Bennett to wait outside in case she needed to call 911/the police. As such, I conclude Price knew/had reason to know that there was evidence of a break-in/forced entry but decided not to follow Respondent's safety protocols and enter the store.

Nevertheless, the record reflects that, once Price opened the door, the alarm sounded, but instead of following protocol, leaving the store and calling the police, she entered the store, alone, and walked around without knowing whether anyone was lying and waiting in the back of the store. Price admitted that she was aware of the safety protocols on March 18 but decided not to follow them endangering herself and Bennett. Ultimately, it was confirmed that someone stole employee personnel files from the back room which classified the incident as a forced entry break-in.

To show pretext, counsel for the General Counsel argued that Respondent failed to present any comparators who were terminated when they entered the store alone after seeing evidence of a forced entry, decided not to call the police or report an unlocked door per Respondent's safety protocol. However, it is the *General Counsel's* burden to produce such evidence. Even assuming it

was Respondent's burden to produce this evidence, the record reveals no instance where a shift supervisor/employee saw evidence of a break-in upon arriving at the store but knowingly failed to follow Respondent's safety protocols as Price.

Counsel also claimed that I prevented her from soliciting comparator testimony when I denied the testimony from a fact witness about a similarly situated employee working at the East-lake store, with the same store manager, prior to any union activity, who supposedly was not terminated when faced with evidence of a forced entry. However, I denied the inclusion of such testimony as I found that the alleged comparator's testimony was too far removed in time to be relevant to this situation.

Counsel next argued that Respondent's failure to properly investigate the March 18 incident, and its disproportionate response, show Respondent's unlawful motive in discharging Price.⁸⁷ Here, counsel argued that, because Respondent failed to interview Barista Bennett, who was present with Price the morning of the break-in, showed that Respondent's discriminatory intent, not Price's misconduct, was the true reason for terminating Price. However, the record shows that Bennett had given her statement to Respondent, and Respondent had taken Bennett's statement, *inter alia*, into consideration in determining to discharge Price.

General Counsel also contended that the severity of Respondent's response to Price's misconduct was disproportionate to the severity of her conduct, and thus, was pretextual.⁸⁸ I disagree since the evidence shows that Respondent's disciplinary response was proportionate to someone endangering their and another employee's safety by entering the store after clearly seeing evidence of a forced entry/burglary. Moreover, the documentary evidence in the record clearly states that violating Respondent's safety protocols could result in termination, and Price admitted that she was aware of the range of potential discipline.

In fact, Respondent determined that Price knowingly violated its safety protocols regarding the March 18 break in, since she knew and followed those same protocols in October 2021 when she was faced with evidence of a forced entry. It was Price's knowing disregard of Respondent's safety protocols which endangered Price's and Bennett's safety that made the March 18 break-in distinguishable from all other forced entry situations she and others faced, which warranted Price's termination.

Lastly, counsel asserted that Respondent's proffered reasons for terminating Price – her failure to follow its safety protocols – are pretextual since Respondent disregarded its own Partner Relations team's recommendation to issue a final written warning (versus discharge) and its discipline decision occurred almost immediately *after* Price participated in the one-day strike. However, the documentary evidence proves that Respondent's investigation of the March 18 break-in *preceded* some of her union activity. Moreover, there is no evidence that: (1) Respondent's

⁸⁶ See *LaGloria Oil & Gas Co.*, 337 NLRB 1120 (2002), *enfd.* 71 Fed.Appx. 441 (5th Cir. 2003)(close timing between protected activity and adverse action can be used to infer animus).

⁸⁷ *Hickory Creek Nursing Home*, 295 NLRB 1144, 1159 (1989)(an employer's failure to conduct a full and fair investigation of an employee's alleged misconduct is evidence of discriminatory intent), see also *Connecticut Health Care Partners d/b/a Woodlands Health Center*, 325 NLRB 351, 364 (1998)(failure to properly investigate is "supportive of

unlawful motivation, since it demonstrates that the Respondent was not truly interested in determining whether misconduct had actually occurred").

⁸⁸ *Detroit Paneling Systems, Inc.*, 330 NLRB 1170, 1170 (2000) (Board found pretext where Union supporter was fired for insubordination for stopping in the lunchroom to talk with coworkers after being told to go home for the day).

management was required to follow the Partner Relations team's recommendations, (2) Partner Relations was aware that Price had previously followed Respondent's safety protocols in the past but knowingly failed to follow them on March 18 or that (3) Partner Relations knew the extent that Price endangered herself and Bennett such that they would have still recommended a final written warning versus discharge.

Therefore, based on the credible evidence in the record, I find that Price was discharged for knowingly failing to follow Respondent's safety protocols during the March 18 break-in. Accordingly, I conclude that Respondent did not violate the Act when it discharged Price on April 29, 2022.

III. RESPONDENT DID NOT VIOLATE SECTION 8(A) (1) OF THE ACT WHEN RESPONDENT ALLEGEDLY THREATENED TO IMPOSE STRICTER CONDITIONS ON PRICE REGARDING HER MINIMUM AVAILABILITY REQUIREMENTS IN RESPONSE TO HER UNION ACTIVITY BUT VIOLATED SECTION 8(A)(1) OF THE ACT WHEN RESPONDENT THREATENED TO IMPOSE STRICTER CONDITIONS ON MAZA REGARDING HER MINIMUM AVAILABILITY REQUIREMENTS IN RESPONSE TO HER UNION ACTIVITY (ALLEGATION #2)

A. Legal Standard

In assessing whether a remark constitutes a threat, the appropriate test is "whether the remark can reasonably be interpreted by the employee as a threat."⁸⁹ The actual intent of the speaker or the effect on the listener is immaterial.⁹⁰ The "threat in question need not be explicit if the language used by the employer or his representative can reasonably be construed as threatening."⁹¹ Rather, the Board considers the totality of the circumstances in assessing whether the reasonable tendency of an ambiguous statement is a veiled threat to coerce.⁹² Accordingly, the basic test to find an 8(a)(1) violation is whether, under the totality of the circumstances, the employer's conduct may reasonably be said to restrain, coerce, or interfere with an employee's rights under Section 7 of the Act.⁹³

As you might imagine, determining whether an ambiguous statement is an illegal threat versus an opinion about possible consequences has proven difficult. It must be assessed in a fact-specific manner, taking into account the employer's right to freedom of speech under Section 8(c) of the Act, balanced against the employee's right to be free from coercive threats under Section 7.

B. Discussion

1. Price.

Based on the evidence in the record, I conclude that Respondent did not threaten to impose stricter conditions on Price's minimum availability due to her union activity.

First, I conclude that Gebben did not "threaten" Price with stricter conditions on her minimum availability. Rather, record evidence reveals that, after Price's second month of leave was

denied by Sedgwick, which meant that Price was placed in a pending time off status, Gebben told Price that she needed to be available to work a minimum of 12 hours per week due to the amount of turnover at the Store in mid-April 2022. When Price replied that she could only be available four hours per week due to her classes and final exams, Gebben responded that if Price could not be available those minimum number of hours, she could not be scheduled for work. While I find that the language is synonymous with telling Price that she would not work if she could not be available at least 12 hours per week, Respondent's Partner Guide, which Price was aware of, gave management the exclusive right to increase/reduce minimum availability based on the needs of the store at the time.

Second, even if Gebben's comment was considered a threat, it was not due to Price's union activity. Specifically, the record reveals that Gebben first told Price about Price needing 12 hours minimum availability on April 1, 2022. They discussed this again in-person on April 4, 2022. Although Price signed a letter of intent to unionize on/about March 17, 2022, and I find that Gebben saw the letter and/or knew *generally* about employees' intent to unionize, I did not find any evidence that Gebben *specifically saw Price's name* on the unionization letter.

As such, while the timing of Gebben's need for Price to be available a minimum of 12 hours is certainly suspicious and there is no concrete evidence as to the needs of the Eastlake store in/around April 2022, since there is no evidence in the record that Gebben specifically knew Price's name was on the letter to unionize, I cannot find, *based on the preponderance of the evidence on this record*, that Gebben's statement to Price that she needed to be available a minimum of 12 hours per week was an unlawful threat due to Price's union activity.

2. Maza.

However, unlike Price, I conclude that Gebben threatened to impose stricter conditions on Maza's minimum availability because of her union activity.

Here, I find that Gebben's statement where she essentially told Maza that if she could not increase her availability beyond one day per week, she would not be placed on the schedule was an implied threat. What makes Gebben's statement to Maza distinguishable from Gebben's statement to Price is Maza's active participation in union activity and Gebben's specific knowledge of it.

Specifically, it is undisputed that Gebben/Respondent specifically knew that Maza was one of the main union organizers at the Eastlake store. The record reflects that Maza often helped employees learn about union and she actively assisted with filing the union petition on March 18, 2022. It is further undisputed that, prior to and around the filing the union petition, Maza informed Gebben and Respondent's upper management about Eastlake employee's wanting to unionize and submitted various demands of Eastlake employees to Respondent.

Moreover, Gebben told Maza that she needed to increase her

⁸⁹ *Smithers Tire & Auto. Testing of Tex.*, 308 NLRB 72 (1992).

⁹⁰ *Smithers Tire*, 308 NLRB 72 (1992); see also *Wyman-Gordon Co. v. NLRB*, 654 F.2d 134, 145 (1st Cir. 1981) (inquiry under Sec. 8(a)(1) is an objective one which examines whether the employer's actions would tend to coerce a reasonable employee).

⁹¹ *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970).

⁹² *KSM Industries*, 336 NLRB 133, 133 (2001).

⁹³ *American Freightways Co.*, 124 NLRB 146 (1959) (basic test is whether the employer's conduct may reasonably be said to restrain, coerce, or interfere with an employee's rights under Section 7 of the Act).

availability within weeks after Maza actively engaged in her prior union activity. The close proximity in time is particularly relevant here since Maza had previously been allowed to reduce her hours/days per week in order to work a second job but she could not reduce her hours in April 2022 almost immediately after she engaged in union activity.

Most importantly, the fact that Respondent did not offer any evidence demonstrating the increased needs of the store in-/around April 2022 made me suspicious of Respondent's motives. Thus, the fact that Gebben *specifically knew* of Maza's union activity and the close timing between Maza's union activity and the stricter minimum availability requirement is what distinguishes Maza's allegations from Price's.

Accordingly, based on the totality of the circumstances in the record, I conclude, as did Maza, that Gebben's conduct in threatening to impose stricter conditions on Maza's minimum availability can reasonably be interpreted as an unlawful retaliatory threat violative of the Act.

IV. RESPONDENT DID NOT VIOLATE SECTION 8(A) (1) OF THE ACT WHEN RESPONDENT ALLEGEDLY THREATENED PRICE WITH DISCHARGE IF SHE DID NOT CHANGE HER WORK AVAILABILITY BUT VIOLATED SECTION 8(A)(1) OF THE ACT WHEN RESPONDENT THREATENED MAZA WITH DISCHARGE IF SHE DID NOT CHANGE HER WORK AVAILABILITY (ALLEGATION #3)

A. Legal Standard

The same legal standard set forth in Part III above applies to the alleged threats to Price and Maza in this section.

B. Discussion

1. Price.

Price's allegation that Gebben threatened her with discharge if she did not increase her availability suffers the same fate as her prior allegation that Gebben threatened her by requiring her to increase her work availability.

Specifically, even if Gebben's statement that she could not schedule Price to work if she could not increase her availability was considered a threat, there is no evidence in this record, and the General Counsel did not show, that Gebben *specifically* knew that Price signed the letter of intent to unionize – her only prior union activity at the time. Without this connection, I cannot conclude that Gebben's remark was an unlawful threat based on Price's protected, concerted activity.

2. Maza.

However, regarding Maza, I conclude that Respondent's conduct regarding Maza violated the Act.

First, the evidence reveals that, although did not technically tell Maza that if she did not increase her availability, she would

be terminated, the effect of what Gebben said to Maza was the same: that is – Gebben told Maza that if she could not increase her availability, she would not be scheduled to work.

Second, the record demonstrates that Gebben made the remark within weeks after Maza told Gebben that the Eastlake employees intended to unionize, within weeks after Maza gave Respondent a list of employee demands, and a couple of days before Maza and her colleagues organized, planned and participated in their one-day strike at the store. In fact, Maza told Gebben about the all-day strike at or around the time Gebben told Maza she could not be scheduled for work if she could not increase her work availability. Thus, the close proximity between Gebben's threat and Maza's union activity raises a strong inference that the remark was made due to Maza's protected activity. I conclude, as Maza had, that a reasonable employee under similar circumstances would reasonably interpret Gebben's remark as a threat.

Lastly, and most importantly, again, other than self-serving statements from Respondent management, Respondent provided no documentary evidence of the increased needs of the store in-/around April 2022 to overcome the close proximity in time between Maza's union activity and Gebben requiring Maza to increase her availability. As such, based on the totality of the circumstances on this record, I conclude that Respondent's threat to Maza to either increase her availability or she would not be scheduled for work within weeks of her union activity can reasonably be interpreted as an unlawful retaliatory threat violative of the Act.

X. RESPONDENT VIOLATED SECTIONS 8(A) (3) AND/OR (1) OF THE ACT WHEN RESPONDENT REQUIRED MAZA TO INCREASE HER AVAILABILITY WHICH EFFECTIVELY CAUSED HER TO BE TERMINATED (ALLEGATION #5)

A. Legal Standard

With respect to the final allegation, the General Counsel, in essence, argued that Maza was constructively discharged when she was not scheduled for work after April 11, 2022. I agree.

A constructive discharge "is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surrounded it."⁹⁴ Specifically, a constructive discharge is where an employer confronts an employee with a Hobson's choice between resignation on the one hand and continued employment conditioned on relinquishment of rights guaranteed by Section 7 of the Act on the other.⁹⁵ The Board has found that it is reasonably foreseeable that a change in hours, such as in Maza's case, can create a hardship sufficient to result in resignation.⁹⁶

The same *Wright Line* test applies to instances of constructive discharge.⁹⁷ In order to succeed on a constructive discharge case,

⁹⁴ *Remodeling by Oltmanns*, 263 NLRB 1152, 1161 (1982), *enfd.* 719 F.2d 1420 (8th Cir. 1983).

⁹⁵ See *Mercy Hospital*, 366 NLRB No. 165, slip op. at 4 (2018) ("[T]here are two elements to a Hobson's Choice constructive discharge: conditioning continued employment on the abandonment of Section 7 rights, and a quit that results from the imposition of that condition.").

⁹⁶ *North Carolina Prisoner Legal Services*, 351 NLRB 464, 470 (2007), citing *Yellow Ambulance Services*, 342 NLRB 804, 807 (2004)

(requiring an employee to choose between work and family obligations is sufficiently burdensome to support a finding of constructive discharge), see also *St. Joseph's Hospital*, 247 NLRB 869, 873, 880 (1980) (finding a constructive discharge where the employer refused an employee's request for reduction in work hours to accommodate her student schedule).

⁹⁷ *N. Texas Inv. Grp.*, 371 NLRB No. 122 (Aug. 11, 2022).

the General Counsel must show: (1) the burdens imposed on Maza must cause, and be intended to cause, a change in her working conditions so difficult or unpleasant that she is forced to resign, and 2) the burdens must have been imposed because of Maza's protected activities.⁹⁸ The first element is established if Respondent "reasonably should have foreseen" that Maza would quit.⁹⁹

B. Discussion

After reviewing the evidence, I find counsel for the General Counsel met her initial burden. Specifically, the first element of the General Counsel's *prima facie* case is satisfied as the record demonstrates that Maza, as she had done in the past, accepted a second job in late March 2022. Maza asked Gebben if she could reduce her availability to one day per week in order to work her other job. Although the General Counsel argued that Gebben approved Maza's change of availability early on, the record reveals otherwise.

In any event, Gebben told Maza that she would need to step down from a shift supervisor to a barista in order to work one day per week since shift supervisors needed to have more availability. Maza agreed.

However, within weeks after Gebben's and Maza's conversation and particularly after Maza assisted the union with filing a petition for election and telling Gebben about the petition, Respondent required Maza to be available for more than one day per week. Respondent presented no independent evidence of the business needs of the Store at the time Maza requested to reduce her workdays.

When Maza told Gebben that she could not increase her availability due to her second job, Gebben told Maza that she could not schedule her for work and that the Partner Relations Board would decide her fate. While the Partner Relations Board reviewed Maza's situation, Maza organized and participated in an all-day strike where she was interviewed by the local and national news media. Almost immediately thereafter, Maza was removed from the schedule and ultimately forced to resign her employment with Respondent after three months without being scheduled to work.

Thus, I conclude that requiring Maza to increase her work availability under these circumstances caused and intended to cause Maza such an unpleasant change in her working conditions that she was forced to resign. Moreover, I conclude that Respondent should have foreseen that Maza would have to resign under the circumstances.

Next, I conclude that the General Counsel established the second element of her *prima facie* case. Specifically, I find that union animus motivated Respondent's actions which caused Maza's forced resignation as Respondent effectively discharged Maza by taking her off the schedule for three consecutive months *almost immediately* after engaging in union activity. The evidence clearly shows that Maza was the most prominent Union supporter, as she advised Gebben of the petition before it was filed, emailed a strike notice and list of union demands to Gebben and CEO Howard Schultz, and organized and particip-

ated in an all-day strike where she was featured in the news. Respondent took her off the schedule immediately after Maza's protected activity.

In its defense, Respondent disputed that it effectively "forced" Maza to resign or that her resignation had anything to do with her prior union activity. Pointing to its Partner Guide that allows management to determine minimum work availability based on the business needs of the store at the time, Respondent contended that Maza was not scheduled for work because she could not increase her availability to accommodate the business needs of the store in/around April/May 2022. However, other than Respondent's self-serving statements about its business needs, there is no corroborating evidence in the record showing what the business needs of the store were at the time. Under a *Wright Line* analysis, Respondent must do more than proffer a legitimate, non-discriminatory reason for the actions it took. Rather, Respondent must *persuade* the trier of fact with sufficient evidence that it would have taken the same action regardless of Maza's union activity. I do not find that Respondent met its burden.

Respondent further argued that it was not motivated by Maza's union activity since it offered Maza several options to try to accommodate her unavailability: personal leave and stepping down to a barista. However, Maza's personal leave request is irrelevant since she requested to take leave beginning in June 2022. As such, Maza's leave request had nothing to do with the reduction in her workdays at issue here. Moreover, Maza credibly testified that she agreed to step down to a barista so she could work one day per week. Unfortunately, she was not allowed to do so.

Lastly, although Respondent argued that Gebben harbored no anti-union animus against Maza since Gebben testified that she wished Maza good luck on the employees' intent to organize, congratulated Maza on her second job and attempted to accommodate her so she could continue to work for Respondent,¹⁰⁰ I ultimately found Gebben's overall testimony less than fully credible regarding the circumstances surrounding Maza's availability.

Accordingly, based on the foregoing, I conclude that Respondent violated the Act when it removed Maza from the schedule for three months which effectively terminated her employment.

CONCLUSIONS OF LAW

1. Respondent Starbucks Corporation in Seattle, Washington is an employer engaged in commerce within the meaning of Section 2(2), (6) AND (7) of the Act.

2. Respondent violated Section 8(a)(1) of the Act when it threatened to impose stricter conditions on Myra Maza regarding her minimum availability requirements in response to her union/protected, concerted activity.

3. Respondent violated Section 8(a)(1) of the Act when it threatened Myra Maza with discharge if she did not change her work availability after she engaged in union/protected, concerted activity.

⁹⁸ *North Carolina Prisoner Legal Services*, supra, citing *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976).

⁹⁹ *American Licorice Co.*, 299 NLRB 145, 148 (1990).

¹⁰⁰ Tr. at 275, 281-282; 556.

4. Respondent violated Sections 8(a)(3) and/or (1) of the Act when it required Myra Maza to increase her work availability which effectively caused her to be terminated.

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

REMEDY

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

Respondent is ordered to cease and desist from threatening to impose stricter conditions on employees regarding their minimum availability requirements in response to their engaging in union/protected, concerted activity.

Respondent is ordered to cease and desist from threatening employees with discharge if they do not change their work availability after they have engaged in union/protected, concerted activity.

Respondent, having constructively discharged Myra Maza in retaliation for her union/protected, concerted activity, must offer her reinstatement and make her whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of effectively terminating her in retaliation for engaging in union/protected, concerted activity. 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 No. 8 (2010).

Respondent shall compensate Myra Maza for her search-for-work and interim employment expenses regardless of whether those expenses exceed her interim earnings. See *King Soopers*, 364 NLRB No. 93 (2016).

Respondent shall file a report with the Regional Director for Region 19 allocating backpay to the appropriate calendar quarters. Respondent shall also compensate Myra Maza for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than one (1) year. See *AdvoServ of New Jersey*, 363 NLRB No. 143 (2016).

Respondent is further ordered to 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.

Within 21 days from the date of the Board's Order, Respondent is ordered to remove from its files any and all references to its unlawful retaliatory constructive discharge of Myra Maza, and, within three (3) days thereafter, notify Myra Maza in writing that this has been done and that the unlawful constructive discharge will not be used against her in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰¹

ORDER

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

1. Cease and desist from

(a) Threatening to impose stricter conditions on employees regarding their minimum availability requirements in response to their union/protected, concerted activity.

(b) Threatening to discharge employees if they do not increase their work availability after they have engaged in union/protected, concerted activity.

(c) Constructively discharging employees if they do not increase their work availability after they have engaged in union/protected, concerted activity.

(d) In any like or related manner interfere with, restrain, or coerce 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 the Board's Order, offer Myra Maza full reinstatement to her former position as a Shift Supervisor, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Myra Maza whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of constructively discharging her in retaliation for engaging in union/protected, concerted activity. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987)(adopting the Internal Revenue Service rate for underpayment of Federal taxes), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Backpay due should not be reduced by any interim earnings the employees may have generated during the backpay period pursuant to *Community Health Services, Inc. d/b/a Mimbres Memorial Hospital & Nursing Home*, 361 NLRB No. 25 (2014).

(c) Compensate Myra Maza for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than one (1) year and compensate Myra Maza for her search-for-work and interim employment expenses regardless of whether those expenses exceed her interim earnings. See *King Soopers*, 364 NLRB No. 93 (2016).

(d) File a report with the Regional Director for Region 19 allocating backpay to the appropriate calendar quarters. See *AdvoServ of New Jersey*, 363 NLRB No. 143 (2016).

(e) 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 electron-

¹⁰¹ 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.

ic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 21 days from the date of the Board's Order, Respondent shall remove from its files any and all references to its constructive discharge of Myra Maza, and, within three (3) days thereafter, notify Myra Maza in writing that this has been done and that the unlawful constructive discharge will not be used against her in any way.

(g) Within 14 days after service by the Region, post at its facility in Seattle, Washington, copies of the attached notice marked "Appendix"¹⁰² in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees and former 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. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 4, 2022.

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

IT IS FURTHER ORDERED that the remaining allegations are dismissed insofar as the complaint alleges violations of the Act not specifically found herein.

Dated, Washington, D.C. September 21, 2023

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT expressly or impliedly, threaten to impose stricter conditions on you regarding your minimum availability requirements in response to your union/protected, concerted activity.

WE WILL NOT expressly or impliedly, threaten you with discharge if you do not change your work availability after you have engaged in union/protected, concerted activity.

WE WILL NOT require you to increase your work availability after you have engaged in union/protected, concerted activity which effectively causes you to be terminated from your employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reinstate Myra Maza to her former position as a Shift Supervisor, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Myra Maza whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of being constructively discharged from her employment in retaliation for engaging in union/protected, concerted activity, less any net interim earnings, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate Myra Maza for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than one (1) year and compensate Myra Maza for her search-for-work and interim employment expenses regardless of whether those expenses exceed her interim earnings.

WE WILL remove or expunge all records of and references to Myra Maza's forced resignation/constructive discharge effective July 11, 2022.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-293492 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.



¹⁰² 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