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Starbucks Corporation and Chicago and Midwest Regional Joint Board, Workers UNITED/SEIU.
Case 18–CA–298181

September 30, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On October 17, 2023, Administrative Law Judge Charles J. Muhl issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority to a three-member panel.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 Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ We shall modify the judge’s recommended Order to conform to our findings and to the Board’s standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

In addition to the remedies recommended by the judge, Member Prouty would order a notice reading and a distribution of the notice to employees before the reading. For the reasons expressed in his concurrence in *CP Anchorage 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151, slip op. at 9–15 (2022), *enfd.* 98 F.4th 314 (D.C. Cir. 2024), Member Prouty would make these remedies standard for all unfair labor practices found by the Board. Moreover, he observes that a notice reading is particularly appropriate here. The violations occurred in managers’ meetings with employees; therefore, the violations should be remedied in a similar way.

⁴ We affirm the judge’s dismissals of the allegations that the Respondent violated Sec. 8(a)(1) by holding captive-audience meetings to dissuade employees from unionizing and by threatening employees that unionizing would cause the loss of a direct relationship between them and management. In dismissing these allegations, the judge applied *Babcock & Wilcox Co.*, 77 NLRB 577 (1948), and *Tri-Cast, Inc.*, 274 NLRB 377 (1985), respectively. After the briefing closed in the present case, the Board issued separate decisions purportedly overruling those cases. See *Amazon.com Services LLC*, 373 NLRB No. 136, slip op. at 1–2 (2024) (holding that “an employer interferes with employees’ decision whether to exercise their Sec[.] 7 rights within the meaning of Sec[.] 8(a)(1) of the Act when it compels employees to attend a captive-audience meeting on pain of discipline or discharge”); *Siren Retail Corp.*

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,² and conclusions only to the extent consistent with this Decision and Order.³

The issues in this case arose in the context of a campaign by Chicago and Midwest Regional Joint Board, Workers United/SEIU (the Union) to organize the employees at the Respondent’s store in West Allis, Wisconsin. For the reasons stated by the judge, we agree that District Manager Meghan Ryan and Store Manager Cassandra Bennett made various unlawful statements during captive audience meetings held on July 19 and 20, 2022.⁴ In this regard, we affirm the judge’s findings, for the reasons he states, that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by unlawfully soliciting employees’ grievances⁵ and threatening the loss of benefits, specifically the loss of previously announced medical benefit and dress code policy change.⁶ In addition, we adopt the finding that the Respondent violated Section 8(a)(1) when Bennett unlawfully threatened a loss

d/b/a Starbucks, 373 NLRB No. 135 (2024) (holding that an employer’s statements about the potential impact of unionization on the relationship between employees and management must be carefully phrased on the basis of objective fact to be lawful). However, in each case, the Board decided to apply its new rule prospectively only. *Amazon.com Services LLC*, 373 NLRB No. 136, slip op. at 20; *Siren Retail Corp. d/b/a Starbucks*, 373 NLRB No. 135, slip op. at 9–10. Accordingly, the new standards are inapplicable to cases, like this one, that were pending when *Amazon.com Services* and *Siren Retail* were decided. We therefore affirm the judge’s dismissal of these allegations. Chairman Murphy and Member Mayer did not participate in *Amazon.com Services* or *Siren Retail*, and they express no view on whether those cases were correctly decided.

We find that the judge did not abuse his discretion by citing to the transcripts of the July 19 and 20 meetings in his decision, rather than the audio recordings of the meetings. Both the transcripts and recordings were admitted as exhibits, and we note that the Respondent points to no specific errors or inaccuracies in the transcripts that would undermine the judge’s findings.

⁵ We reject the Respondent’s argument that its solicitation of grievances was consistent with past practice and, thus, not unlawful. In doing so, we note the lack of evidence or specific examples demonstrating that solicitations by higher management during mandatory group meetings inviting and offering to escalate complaints were similar in method and manner to prior solicitations and remedying of grievances. Cf. *Johnson Technology, Inc.*, 345 NLRB 762, 763–64 (2005) (finding respondent’s solicitation of grievances to be a lawful past practice based on credited testimony that it had an ongoing dialogue with its employees and efforts to improve its operations, and that supervisors routinely discussed problems and concerns directly with employees and relayed them to higher management).

⁶ In finding this violation, we find it unnecessary to pass on whether the Respondent additionally violated Sec. 8(a)(1) by threatening the loss of the “borrowed partner” benefit, and we also find it unnecessary to pass on whether Bennett’s statement that employees’ union activity was causing a negative environment at the store was unlawful because finding those additional violations would not materially affect the remedy. Member Prouty would reach the merits of these violations and affirm the judge for the reasons stated in his decision. With respect to the loss of

of benefits, specifically the loss of a planned pay raise, during a one-on-one meeting with employee Jessica Thompson on June 23, 2022.

For the reasons explained below, however, we reverse the judge's findings that the Respondent unlawfully threatened more onerous working conditions when Bennett stated she would leave the store during the meeting with Thompson and in a separate one-on-one meeting with employee Taylor Kiska on the same date. We also reverse the judge's finding that the Respondent violated the Act when Bennett told Thompson that she was being "aggressive" during that meeting.

I. BACKGROUND

On June 23, 2022, Store Manager Bennett asked to speak with Thompson on the outside patio in front of the store. Once they were outside, Bennett began the conversation by saying that she was expressing her own opinions and experiences. Bennett then told Thompson she did not understand why employees were trying to form a union, and she spoke of her previous experience with a union. She expressed her view that she thought the union would change the store environment and noted that the energy in the store had shifted since the petition filing, adding that she would leave the store if a union was formed because she felt she could not lead the way she needed to. During the conversation, Bennett also told Thompson that, because of the petition, employees would not receive benefits the Respondent had previously promised. Thompson replied that she did not believe that was true. Bennett then remarked that, in that moment, she felt Thompson was being aggressive.

That same day, Bennett also spoke to Kiska in the back room of the store. Bennett asked Kiska if she had heard about the Union. Kiska indicated that she had and that she supported it. Bennett told her she used to work for a union and the union ended up firing her, and she expressed her view that a union causes negative things to happen. She added that she would not be able to support employees in the same way because she could not talk to them one-on-one, and that she would leave the store if the employees unionized.

II. ANALYSIS

The judge found that Bennett's statements to Thompson and Kiska that she would leave the store if employees

voted to join the Union, coupled with her statements about changing the store for the better and always being supportive of employees, constituted threats of more onerous working conditions in violation of Section 8(a)(1). We reverse the judge and find that these statements were a lawful expression of "views, argument, or opinion" under Section 8(c) of the Act.

It is well settled that "an employer may criticize, disparage, or denigrate a union without running afoul of Section 8(a)(1), provided that its expression of opinion does not threaten employees or otherwise interfere with the Section 7 rights of employees." *Children's Center for Behavioral Development*, 347 NLRB 35, 35 (2006). In discussing the Union with Thompson, Bennett prefaced the conversation by stating that she was sharing her opinions before recounting her prior negative experience with a union. Based on that prior experience, Bennett explained to Thompson how unionization could impact the store and stated that she would leave the store if employees voted to join the Union. Similarly, in her conversation with Kiska, Bennett shared her prior experience with a unionized workplace and stated that she would leave the store if employees voted in favor of unionization. In these circumstances, we find that an employee would reasonably understand Bennett's comments as mere expressions of personal opinions on unionization and how that would impact her own continued employment, not as a threat of reprisal in the form of more onerous working conditions.

In finding to the contrary, the judge and our dissenting colleague emphasize that Bennett was a supportive manager who had changed the store's working environment and conclude that the clear implication of Bennett's remarks regarding leaving the store in the event of unionization was that working conditions at the store would worsen.⁷ But Bennett's remarks about her future employment in the event of unionization, without more, do not constitute a violation of the Act. See *Starbucks Corp.*, 373 NLRB No. 53, slip op. at 4 (2024) (finding manager's remarks about his own personal employment circumstances in the event of unionization not unlawful); cf. *Starbucks Corp. v. NLRB*, No. 24-60650, 2026 WL 2620426, at *22 (5th Cir. Sept. 4, 2026) (finding lawful manager's statements hypothesizing limited ability to assist employees to same degree if they unionize).

the "borrowed partner" benefit, in Member Prouty's view, a reasonable employee in a position of economic dependence on the Respondent would have understood the managers' statements that the unionized Canadian store did not permit borrowing employees to imply that West Allis employees could expect the same benefit loss if they voted for union representation

We also find that the judge did not abuse his discretion in declining to address an allegation of an additional threat of a loss of benefit in the form of a planned wage increase during these meetings first asserted in the General's Counsel posthearing brief.

⁷ The judge and dissent also implicitly assume that any replacement for Bennett would necessarily be less supportive. But no record evidence supports this supposition.

Further, the cases relied on by the judge in finding this violation—*Gunderson Rail Services, LLC*, 364 NLRB 279, 279–280 (2016), and *Beverly Enterprises*, 310 NLRB 222 (1993), enfd. in part 17 F.3d 580 (2d Cir. 1994), are readily distinguishable. In *Gunderson*, plant manager Valenzuela’s statement that employees’ organizing activities during work time “made things worse” was made in the context of Valenzuela explaining the basis for a mass layoff of employees.⁸ In *Beverly Enterprises*, vice-president Cess told employees that, “if they thought things were bad now, they should vote for the Union, and they would see how bad it could get”—language that is difficult to interpret as anything other than a threat—in a case where the Board found that the respondent committed over 130 violations of the Act. Neither the mass layoff, the express threat, nor the pervasive unlawful backdrop is present here. The dissent dismisses these as distinctions without a difference, but they are precisely the difference between a threat of employer-imposed reprisal and an opinion about the speaker’s own future.⁹

We also reverse the judge’s finding that Bennett’s labeling of Thompson as “aggressive” violated Section 8(a)(1). Before the judge, the General Counsel asserted that Bennett’s remark was unlawfully coercive because it indicated that the Respondent was not tolerant of Thompson challenging Bennett and was “akin to a warning that Thompson should not question the Respondent in this regard.” The General Counsel did not, however, point to any precedent to support finding Bennett’s statement unlawful. For his part, the judge found the statement unlawful because it cast Thompson’s protected activity in a negative light and our dissenting colleague similarly recasts the remark as a euphemism for protected activity.¹⁰ We disagree. Bennett’s passing remark merely reflected her subjective perception of Thompson’s demeanor and, without more, would not be perceived as coercive by a

reasonable employee. In these circumstances, we find, contrary to the judge, that neither the facts nor any precedent support finding the violation as alleged.

Accordingly, we dismiss these allegations.¹¹

ORDER

The National Labor Relations Board orders that the Respondent, Starbucks Corporation, West Allis, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with a loss of benefits if they select the Union as their bargaining representative.

(b) Soliciting grievances from employees and promising to remedy them in order to discourage employees from selecting union representation.

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

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

(a) Within 14 days after service by the Region, post at its West Allis, Wisconsin, facility copies of the attached notice marked “Appendix.”¹² Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business

⁸ Chairman Murphy and Member Mayer note that they did not participate in *Gunderson* and express no view on whether that case was correctly decided.

⁹ We are also unpersuaded by our dissenting colleague’s reliance on *Colonial Parking*, 363 NLRB 836, 842 (2016). *Colonial Parking* is inapposite because there the manager tied a worsening of the existing employer-employee relationship directly to the employee’s union support, warning that their “good and close” relationship would change for the worse, whereas Bennett threatened no change in how the employer would treat employees and spoke only to her own decision to leave.

¹⁰ In support, the judge relied on *Con-way Freight, Inc.*, 366 NLRB No. 183 (2018). But that case is readily distinguishable as the unlawful statement there was a threat of violence by a manager describing *himself* as aggressive and vengeful rather than characterizing an employee’s behavior as such. *Id.*, slip op. at 5.

¹¹ Our dissenting colleague asserts that we “fail[] to apply” the totality-of-the-circumstances test, in dismissing these allegations but that charge is misplaced. We apply the same objective inquiry the dissent invokes, whether, considering all the circumstances, the statements had

a reasonable tendency to coerce or interfere with Sec. 7 rights. The disagreement is not about the test, but about what it requires: a coercive threat. Because Bennett’s statements about her personal employment and perception of Thompson’s demeanor contained none, they remain protected under Sec. 8(c) no matter how carefully the surrounding context is examined. Indeed, we considered the setting the dissent stresses, that the conversations were one-on-one, in less-trafficked neutral areas, with the store manager, close in time to protected activity. None of it converts a statement about Bennett’s own future, grounded in her prior union experience, and a passing reaction to a terse exchange, into a threat of employer reprisal against employees. Context informs how a reasonable employee would hear a statement; it does not manufacture a threat where there is none.

¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 23, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps 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

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting in part.

In reversing the judge's findings regarding Store Manager Bennett's June 23 statements to Thompson and Kiska, the majority fails to apply the applicable standard for determining a 8(a)(1) violation. That standard requires the Board to consider whether, under the "totality of the circumstances," the statement has a reasonable tendency to coerce or interfere with employees' Section 7 rights. See *Tasty Baking Co. v. NLRB*, 254 F.3d 114, 124 (D.C. Cir. 2001); *NLRB v. Delta Gas, Inc.*, 840 F.2d 309, 311 (5th Cir. 1988). *Accord Lush Cosmetics, LLC*, 372 NLRB No. 54, slip op. at 3 (2023). As the Board has explained, "[t]he context in which the alleged threat was communicated is critical to determining how a reasonable employee could interpret the particular words spoken." *Cintas Corp.*, 372 NLRB No. 34, slip op. at 4 (2022). Whether or not a statement has a coercive or threatening effect is an

assessment that must be made "in the context of its labor relations setting," taking into account "the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a disinterested ear." *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969). Thus, the standard is an objective one that focuses on the employee's perspective; the subjective intent of the speaker is irrelevant. See *Smithers Tire & Auto Testing of TX, Inc.*, 308 NLRB 72, 72 (1992) ("The test is *not* the actual intent of the speaker or the actual effect on the listener.>").

Here, the majority ignores several critical circumstances surrounding Bennett's June 23 comments that created a coercive environment. Starting with Thompson, the conversation between her and Bennett marked the first day the two had worked together since Thompson had emailed a letter (that both she and Kiska had signed) to Bennett and CEO Howard Schultz requesting voluntary recognition of the Union. That conversation occurred on the outdoor patio away from other employees—a location that Bennett had not previously used to hold a conversation with Thompson. Bennett was also Thompson's immediate supervisor and the highest-ranking official at the store. During that direct, one-on-one conversation, Bennett also threatened Thompson that the employees would lose promised benefits if they unionized.

The context within which the conversation with Kiska occurred differs only in that it occurred in the back room of the store, again away from others, and that Bennett made a different unlawful threat to Kiska, warning her that unionization causes a lot of negative things to happen.¹ As discussed below, the majority's findings cannot stand when Bennett's statements to Thompson and Kiska are examined in their full context.

The judge properly found that an employee would reasonably understand Bennett's statement that she would leave the store if employees voted for union representation to be an implied threat that unionization would worsen employees' working conditions. The majority's claim that Bennett's statement does not, "without more," violate the

¹ Unlike my colleagues, I treat Bennett's comment to Kiska that a union causes negative things to happen as a separate Sec. 8(a)(1) violation. It was alleged as such in the complaint and, like the threat to withhold benefits, is a threat separate and apart from Bennett's statement that she would leave if the employees voted for Union representation. As the judge explained in finding the statement to be an unlawful threat, Bennett couched her prediction of "negative things" as a certainty, not a possibility. Moreover, *Gissel* instructs that predictions as to the effects of unionization "must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond [employer's] control." 395 U.S. at 618. Bennett's comment that

unionization would bring negative things was not based on any objective facts or the nature of the collective-bargaining process. Absent such qualifications, the statement was unlawful. See *Cadillac of Naperville, Inc. v. NLRB*, 14 F.4th 703, 715–716 (D.C. Cir. 2021) (employer unlawfully threatened employee by stating that "things would not be the same" if employees went on strike where employer did not refer to any adverse circumstances out of employer's control or any other objective basis for prediction); *Portola Packaging, Inc.*, 361 NLRB 1316, 1340 (2014) (implying that if union won the election "some bad things would happen" is an unlawful threat).

Act disregards the surrounding circumstances in which that comment was made. Simply put, there is quite a bit “more” that the majority ignores. Both conversations occurred close in time to Thompson’s and Kiska’s engaging in protected organizing activity. In both situations, the highest-ranking manager in the store prefaced her comment about leaving if the Union came in with other threats about lost benefits and “negative things,” thereby placing her departure on this continuum of losses employees would suffer if the Union was selected. The majority acts contrary to precedent by not referencing or considering such circumstances. See *NLRB v. Brookwood Furniture*, 701 F.2d 452, 460 (5th Cir. 1983) (timing of employer’s warning to employee, occurring shortly after start of union campaign, supports finding of unlawful threat); *TRW-United Greenfield Div. v. NLRB*, 637 F.2d 410, 420 (5th Cir. 1981) (“The presence of contemporaneous threats or unfair labor practices is often a critical factor in determining whether there is a threatening color to [an] employer’s remarks.”); *Cogburn Healthcare Ctr., Inc.*, 335 NLRB 1397, 1400 (2001) (severity of conduct is heightened by involvement of high-ranking official).

The majority is also mistaken in criticizing the judge and me for “implicitly assuming” without support in the record that any replacement for Bennett would be less supportive. The record support for such an inference is there; the majority simply refuses to recognize it. To begin, it is unnecessary to the violation that Bennett explicitly stated that her replacement would be less accommodating. And, in any event, the threat is about more than the prospective replacement; it also encompasses the threatened loss of an empathetic manager. See *Concepts & Designs*, 318 NLRB 948, 954 (1995) (a statement need not explicitly articulate an unlawful outcome to be coercive), *enfd.* 101 F.3d 1243 (8th Cir. 1996). Again, context is important, and the majority should remember that both Thompson and Kiska, in hearing Bennett’s comments, are attuned to the “intended implications of the [employer] that might be more readily dismissed by a more disinterested ear.” *Gissel*, 395 U.S. at 617. When Bennett made her comment about leaving the store if employees voted for union representation, she deliberately emphasized the positive effects of her leadership during her tenure. Bennett reminded both Thompson and Kiska that she had consistently provided support to the employees. By referencing her history of supportive leadership, Bennett underscored the potential loss that employees would face if she were no longer present at the store, further reinforcing the idea that unionization could negatively affect their work-

ing conditions. Thus, Bennett’s statement was not merely a remark about her future employment plans. Rather, the judge properly inferred that an employee would reasonably view that statement as a threat that unionization would worsen working conditions by causing the loss of a supportive manager. Certainly, Bennett’s words did not presage that the loss of Bennett and the hiring of any subsequent replacement would mark an improvement in working conditions. See *Colonial Parking*, 363 NLRB 836, 842 (2016) (manager’s statement to employee that employee’s union support would change their otherwise “good and close” relationship was an unlawful threat that employment conditions would change for the worse).² Moreover, while Bennett may have intended her comment to be no more than a remark about her future employment, that intent is irrelevant to the inquiry. See *Smithers Tire & Auto. Testing*, 308 NLRB 72, 72 (1992).

The majority’s attack on the judge’s cited precedent focuses on the specifics of those cases but misses the forest for the trees. True, the employer’s statement in *Gunderson Rail Services*, 364 NLRB 279, 279–280 (2016), that the employees’ organizing activity “made things worse” was made in the context of explaining the reason for a mass layoff. But that is a distinction without a difference. Here, Bennett’s comment was made in the context of telling employees how unionization would result in lost benefits or cause “negative things” to happen. In both cases, the speakers blamed worsening work conditions on union activity. And the direct threat in *Beverly Enterprises*, 310 NLRB 222, 230 (1993), simply made explicit what Bennett made implicit—that a vote for unionization would bring worsening conditions. That the threat in *Beverly Enterprises* was one of 130 violations does not make Bennett’s words, spoken by a manager during a nascent union campaign and following on the heels of other threats, any less coercive. Thus, the majority’s criticism of this precedent as inapposite rests on surface-level differences and fails to recognize the common circumstances shared between those cases and the present one—namely, an employer’s words spoken to an employee in an indisputably coercive context.

Nor can the majority minimize the threatening nature of Bennett’s comments by noting Bennett prefaced her statement as an “opinion.” Simply couching a statement in terms of a personal opinion is not sufficient to neutralize its coerciveness. See *Dura-Line Corp.*, 366 NLRB No. 126, slip op. at 26 (2018) (threat stated as a matter of personal opinion is still coercive); In *Re Mid-South Drywall Co., Inc.*, 339 NLRB 480, 481 (2003) (manager couching

² The majority’s criticism of my reliance on *Colonial Parking* is misplaced. In *Colonial Parking* and here, the statements at issue tied worsening working conditions to unionization. By focusing on *how*

those conditions would worsen—whether by the loss of a “good and close” relationship with an employer or by the loss of a supportive manager—the majority misses the point.

union opposition in terms of his personal opinion did not render phrase that “if [manager] owned the business, he would close it” any less coercive). See also *Peabody Coal v. NLRB*, 725 F.2d 357, 363 (6th Cir. 1984) (employer cannot “obtain the protection of [S]ection 8(c) simply by labeling his statements ‘opinion’”). Thus, while Section 8(c) does permit an employer to present its opinion and provide an alternate view of unionization, employers must do so without threatening employees. Given the threatening nature of Bennett’s comments and the coercive circumstances within which they were made, her statements “crossed the line from innocent expression of a viewpoint to a threat.” *Cadillac of Naperville*, 14 F.4th at 716.

The judge was also correct to find that Bennett’s labeling of Thompson’s protected conduct as “aggressive” violated Section 8(a)(1). In finding otherwise, the majority again ignores the relevant context. Specifically, in characterizing Bennett’s comment a “passing remark,” the majority disregards what prompted Bennett’s retort. As the judge noted, the behavior that Bennett deemed aggressive was Thompson’s rebuke of Bennett’s threat that unionization would cause employees to lose benefits. That conversation was not a casual discussion involving the nonchalant exchange of observations but instead involved an employee asserting that their manager was wrong about the threatened elimination of benefits. Thus, considering all circumstances, the comment was embedded in a conversation about union activity that, as noted, included an unlawful threat to withhold benefits and occurred in an unusual area of the store soon after Thompson had presented Bennett with a written recognition letter. In such circumstances, an employee would reasonably view Bennett’s comment as a coercive warning that engaging in protected activity was disfavored.

Moreover, the majority cannot lessen the coercive nature of Bennett’s statement with its observation that Bennett was simply sharing her “subjective perception of Thompson’s demeanor.” The speaker’s subjective view or intent has no place in this analysis. Indeed, it is concerning that the majority is unbothered by its reliance on Bennett’s subjective characterization of Thompson’s conduct, despite its acknowledgment of the well-established precedent that such evidence is irrelevant to the Section 8(a)(1) inquiry. See *Smithers Tire*, 308 NLRB at 72. See also, e.g., *Allegheny Ludlum Corp. v. NLRB*, 301 F.3d 167, 176 (3d Cir. 2002) (“[T]he test is an objective test in which the employer’s intent is irrelevant and the proper inquiry is the impression of a reasonable employee.”). The term “aggressive” is exactly as the judge described—meant to cast Bennett’s protected activity in a negative light. The majority’s criticism that the General Counsel did not cite a specific case to support this finding, or that the judge’s

cited precedent is not analogous, is of no moment, especially given that the majority cites no precedent to support their view either. In any event, a violation does not require precedent finding unlawful an employer’s characterization of an employee’s protected conduct as “aggressive.” See *Cadillac of Naperville*, 14 F.4th at 717 (“Labor law does not categorize statements as permissible or impermissible based just on which words were used. Instead, words draw their meaning from context.”). Moreover, it cannot be lost that the characterization of Thompson’s conduct as “aggressive” was merely a euphemism for her refutation of a threatened loss of benefits. “It is well-settled that an employer’s reference to an employee’s attitude can be a disguised reference to an employee’s protected concerted activity.” *Rock Valley Trucking Co., Inc.*, 350 NLRB 69, 70 fn. 6 (2007). See also *Pacific Green Trucking Inc.*, 368 NLRB No. 14, slip op. at 6 (2019) (employer violated Section 8(a)(1) by threatening to fire employee for “fighting” where “fighting” was a euphemism for talking about the union); *Smithfield Foods, Inc.*, 347 NLRB 1266, 1274 (2006) (supervisor’s statement that employee was a “problem person” was a veiled reference to employee’s union activity).

In sum, the majority’s labeling of Bennett’s comments to Thompson and Kiska as mere expressions of opinion or passing remarks can only be supported when the statements are divorced from their actual context. While I agree with the majority that context cannot manufacture a threat, I part ways with the majority’s willingness to sweep that context under the rug, to place determinative weight on Bennett’s subjective perceptions, and to judge her statements with a “disinterested ear” instead of considering them from the viewpoint of an employee whose economic livelihood is dependent upon their employer. *Gissel*, 395 U.S. at 617. Having examined the context from the proper viewpoint, I believe that an employee hearing Bennett’s statements soon after engaging in union activity would reasonably understand her declarations as coercive threats.

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

David M. Prouty,

Member

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 threaten you with a loss of benefits if you select the Union as your bargaining representative.

WE WILL NOT solicit grievances from you and promise to remedy them in order to discourage you from selecting union representation.

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

STARBUCKS CORPORATION

The Board's decision can be found at <https://www.nlrb.gov/case/18-CA-298181> 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



Tabitha E. Boerschinger, Esq. and Renée Medved, Esq., for the General Counsel.

Michael S. Yellin, Esq., Michael R. Gotzler, Esq. and Nina Neff, Esq. (Littler Mendelson, P.C.), for the Respondent.

DECISION

CHARLES J. MUHL, Administrative Law Judge. The General Counsel's complaint in this case alleges that Starbucks Corporation (the Respondent) repeatedly violated Section 8(a)(1) of the National Labor Relations Act (the Act). The alleged violations occurred after the Respondent learned that employees at its West Allis, Wisconsin, coffee shop had initiated an organizing campaign with the Chicago & Midwest Regional Joint Board, Workers United/SEIU (the Union). In particular, the General Counsel alleges that Store Manager Cassandra Bennett made unlawful threats during conversations on June 23, 2022, with two different employees. The General Counsel also alleges that Bennett and District Manager Meghan Ryan made unlawful threats and solicited grievances with promises to remedy them during two meetings on July 19 and 20, 2022, with groups of employees. I conclude that the General Counsel has proven most, but not all, of the complaint allegations.¹

On June 5, 2023, I heard this case in person in Milwaukee, Wisconsin. On July 31, 2023, the General Counsel and the Respondent filed post hearing briefs, which I have read and carefully considered. On the entire record, I make the following findings of fact and conclusions of law.²

¹ On September 30, 2022, the General Counsel, through the Regional Director for Region 18 of the National Labor Relations Board (the Board), issued a complaint against the Respondent in Case 18-CA-298181. The complaint was premised upon an unfair labor practice charge filed by the Union on June 24, 2022, which the Union amended on July 11, 2022. On October 13, 2022, the Respondent timely filed an answer to the complaint denying the substantive allegations and asserting numerous affirmative defenses. On March 21, 2023, the General Counsel amended the complaint. The Respondent timely answered the amended complaint on April 3, 2023. The General Counsel amended the complaint a second time on May 11, 2023, which the Respondent timely answered on May 15, 2023.

In its answers, the Respondent admitted, and I so find, that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act. At the hearing, the Respondent admitted, and I so find, that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. (Tr. 102.)

² In order to aid review, I have included citations to the record in my findings of fact. The citations are not necessarily exclusive or exhaust-

ive. My findings of fact are based upon consideration of the entire record. Any testimony in conflict with my findings has been discredited. In assessing witnesses' credibility, I primarily relied upon witness demeanor. I also have considered the context of the testimony, the quality of the recollections, 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). Of course, 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), reversed on other grounds 340 U.S. 474 (1951). My specific credibility determinations are detailed in the findings of fact.

ALLEGED UNFAIR LABOR PRACTICES

I. BACKGROUND FINDINGS OF FACT

The Respondent is engaged in the business of the retail operation of coffee shops throughout the United States, including at a store located in West Allis, Wisconsin. The Respondent is a Washington state corporation with its headquarters in Seattle. During the summer of 2022, Meghan Ryan was a district manager for the Respondent whose responsibilities included oversight of the West Allis store. On average, Ryan visited the West Allis store once every 2 weeks. She routinely spoke with all the store's employees (or "partners" in the Respondent's vernacular) during those visits.³ During the same time period, Cassandra Bennett was the West Allis store manager. In that role, Bennett spoke to store employees on a daily basis and asked them how they were doing.⁴ Among the employees at the store were Jessica Thompson, a shift supervisor, and Taylor Kiska, a barista and barista trainer.

At some point prior to May 3, 2022⁵, the Respondent announced a wage increase effective August 1 pursuant to which all partners would earn an hourly wage of at least \$15 per hour. A May 3 posting on the Respondent's website confirmed the wage increase. The posting further noted that the wage increase would only apply to stores where the Respondent unilaterally had the right to make the change but not in unionized stores where it did not have that right. In a May 16 posting, the Respondent announced that, in light of the Supreme Court overturning *Roe v. Wade*, it would provide partners enrolled in its health-care plan with a medical travel reimbursement benefit to access an abortion.⁶

II. DID BENNETT VIOLATE SECTION 8(A)(1) DURING A JUNE 23 CONVERSATION WITH THOMPSON AFTER THE UNION FILED A PETITION FOR AN ELECTION?

FINDINGS OF FACT

On June 14, the Union filed a petition seeking a Board-conducted election to determine if all full-time and regular part-time baristas and shift supervisors at the West Allis store wished to designate the Union as their exclusive collective-bargaining representative.⁷

³ Ryan testified in conclusory fashion, in response to leading questions, that it was her consistent practice to discuss with partners what was and was not working in the store during her store visits. She did not offer any specific examples of doing so with any partners. She also testified about providing partners with her phone number when they were hired but, again, did not provide any examples of partners calling her to address workplace issues. (Tr. 144–147.)

⁴ Tr. 157.

⁵ All dates hereinafter are in 2022 unless otherwise specified.

⁶ GC Exhs. 8, 14, 16, 18, and 19 are the postings as well as flyers posted in the West Allis store with the same information.

⁷ GC Exh. 2. The representation case number is 18–RC–297612.

⁸ GC Exh. 15.

⁹ Tr. 53–55, 88, 96, 159–162, 172–174. The findings of fact in this paragraph are a compilation of the uncontradicted testimony of Thompson and Bennett concerning the statements each made during the conversation. The sequence of the statements is not entirely clear in the record. Where the testimony of the two is in conflict, I credit

On that same date, Thompson sent a letter via email to Bennett and Howard Schultz, then the Respondent's chief executive officer, entitled "Store #9281 Union Recognition Letter." The names of ten employees appeared as signatories on the letter. Thompson and Kiska were the first and second employees on the list. The employees requested that the Respondent voluntarily recognize the Union as their bargaining representative.⁸

On June 23, Store Manager Bennett approached Shift Supervisor (partner) Thompson and asked Thompson to speak with her on the outside patio in front of the West Allis store. This was the first time the two spoke after the Union filed the petition and Thompson sent Bennett the voluntary recognition request. It also was the first time they ever spoke on the patio. No one else was present. Bennett opened the conversation by saying she was expressing her facts, opinions, and experiences, and that she was legally allowed to do so. Thereafter at different points in the conversation, Bennett told Thompson she did not understand why employees were trying to form a union. Bennett also said that she would leave the store if a union was formed because she felt she could not lead the way that she needed to. She said that direct dialogue with partners could change as a result of unionization. Bennett spoke of her own experience with a union and how it would drastically change the environment that they had worked so hard to create. Bennett said that, since the petition filing, the energy in the store had shifted. She also told Thompson that, as a result of the petition, employees would not receive benefits that the Respondent had promised the prior fall. Thompson responded that she did not believe that was true. Bennett then commented that she felt, in the moment, that Thompson was being aggressive. Bennett also said during the conversation that, when Bennett came to the store in 2021, she had completely changed it. Bennett told Thompson she had always been supportive of partners and that was another reason why she did not understand why employees were doing this. At some point in the conversation, Thompson told Bennett that she thought what the partners were doing was good for the store. Thompson also told Bennett that, if every store manager was like her, partners would not need to unionize. After the conversation ended, Bennett sent an email to Ryan describing the conversation.⁹

Thompson's testimony, which was assured, forthright, and consistent. Thompson also exhibited good and specific recall of the conversation. In contrast, Bennett was not asked an open-ended question during her direct examination concerning what was said and by whom during the conversation. Instead, her testimony largely consisted of denials, in response to leading questions, of making specific statements alleged by Thompson. (Tr. 160–162.) Bennett denied that she asked Thompson why Thompson wanted to unionize. (Tr. 160.) She also denied telling Thompson she would resign if the store voted to unionize (yet then tacitly admitted she said that by acknowledging she told Thompson she did not personally want to work in a unionized environment again). (Tr. 161.) She denied accusing Thompson of being aggressive and denied discussing benefits with Thompson. (Tr. 161–162.) The omission of an open-ended question and a response about what was said during the conversation undermines Bennett's testimony, as did her demeanor when providing the answers she did.

The Respondent argues that Bennett's testimony should be credited because it was corroborated by the contemporaneous email Bennett sent

ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1) by Bennett's repeated threats to Thompson during their June 23 conversation. Specifically, the General Counsel alleges that Bennett threatened Thompson that employees would lose the planned fall benefit increases if they voted to be represented by the Union. The General Counsel also alleges that Bennett threatened Thompson that Bennett would leave the store if employees voted to be represented by the Union, thereby implying things would get worse if she left the store. Finally, the General Counsel alleges that Bennett accused Thompson of being aggressive because Thompson challenged her assertions about the effects of unionization on planned benefit increases.¹⁰

A. Legal Framework

An employer violates Section 8(a)(1) by statements reasonably tending to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *KSM Industries*, 336 NLRB 133, 133 (2001). The Board's standard for determining whether an unlawful threat was made is "whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction." *Double D. Construction Group, Inc.*, 339 NLRB 303, 303–304 (2003). In contrast, Section 8(c) of the Act gives an employer's representative the right to express an opinion about the union, including criticizing, disparaging, or denigrating the union. However, to be lawful under Section 8(c), such statements of opinion must not contain any threat of reprisal or force or promise of benefit. *Children's Center for Behavioral Development*, 347 NLRB 35, 35 (2006). The intent of the speaker in making the statement and the actual effect the statement has on the listener are immaterial. *Smithers Tire*, 308 NLRB 72, 72 (1992); *Puritech Industries*, 246 NLRB 618, 622–623 (1979). The Board considers the totality of circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. *Concepts & Designs*, 318 NLRB 948, 954–955 (1995). Accordingly, the context in which the alleged threat was communicated is critical to determining how a reasonable employee could interpret the particular words spoken. *Cintas Corp. No. 2*, 372 NLRB No. 34, slip op. at 4 (2022).

B. Threats of Loss of Benefits and Being "Aggressive"

During the June 23 conversation, Store Manager Bennett told Partner Thompson that, as a result of the petition, employees would not receive benefits that the Respondent had promised the prior fall. Thompson responded that she did not believe that was true. Bennett then commented that she felt, in the moment, Thompson was being aggressive.

Bennett's statement that the employees would lose the previously promised benefits due to the union filing an election peti-

tion violates Section 8(a)(1). *SNE Enterprises, Inc.*, 347 NLRB 472, 480 (2006) (employer unlawfully informed employees that they would not receive a previously planned wage increase because the union filed a representation petition). Bennett attributed the loss of the previously announced benefit increases solely to the union's petition filing. She did not further explain to Thompson that the benefit increase would occur with or without a union and the sole reason for the postponement was for the Respondent to avoid the appearance of influencing the election's outcome. *Grouse Mountain Lodge*, 333 NLRB 1322, 1324 (2001), quoting *Atlantic Forest Products*, 282 NLRB 855, 858 (1987). She also did not convey that any benefits announced after the petition filing would be subject to contract negotiations if the Union was voted in. *Flamingo Hilton-Laughlin*, 324 NLRB 72, 104–105 (1997) (no violation where consultant stated that most of the benefits were subject to negotiations if the union was voted in, because the phrasing merely reminded employees of the uncertainty of negotiations). Accordingly, Bennett unlawfully threatened a loss of benefits.

Likewise, Bennett's labeling of Thompson as "aggressive" due to Thompson's rebuke of Bennett's threat of the loss of benefits for organizing violates Section 8(a)(1). *Con-Way Freight, Inc.*, 366 NLRB No. 183 (2018) (labor consultant's statement to known union supporter that consultant had an "aggressive and vengeful nature in the face of opposition" was unlawful). Bennett's casting of Thompson's Section 7 activity in a negative light would have the coercive effect on a reasonable employee of making it less likely that the employee would engage in that protected activity going forward.

The Respondent argues that Bennett's statements to Thompson do not violate Section 8(a)(1), because Thompson's response to Bennett's loss-of-benefits statement (i.e. "I don't think that's true") reveals that Thompson was not threatened by what Bennett said. However, Thompson's subjective reaction to Bennett's statements is irrelevant to the determination of whether the statements violate Section 8(a)(1). It is the objective reaction of a reasonable employee that controls. An objective employee would feel coerced by a supervisor unlawfully stating that employees will lose benefits due to their union organizing and, when challenged as to the veracity of the statement, telling the employee she was "aggressive."

C. Threat of More Onerous Working Conditions

During their conversation on June 23, Bennett told Thompson she would "leave the store" (i.e., quit her employment) with the Respondent, if employees voted the Union in, because she would not be able to lead the way she wanted to (direct communication with employees). She coupled that statement with comments about how she had completely changed the store when she arrived (for the better) and always had been supportive of the employees.

to Ryan about the conversation. (GC Exh. 17.) The Respondent notes that several of the statements attributed to Bennett by Thompson do not appear in Bennett's description of the conversation. I find no merit to this argument. Bennett was not asked any questions, and did not testify, concerning whether the contents of the email were a complete recitation of everything that was said in the conversation. Logically, it would not

be. Without such testimony, the Respondent has not established through the exhibit that Bennett did not make certain statements to Thompson.

Finally, I do not credit Thompson's testimony that Bennett said things would get worse at the store after Bennett left. Thompson said that Bennett "did imply" this during the conversation but was not asked and did not explain how Bennett implied it. (Tr. 55.)

¹⁰ Complaint paragraphs 6(c), 6(d), and 6(e).

An employer's statement that things will get worse for employees as a result of their organizing activities or choosing a union as their bargaining representative violates Section 8(a)(1). *Gunderson Rail Services*, 364 NLRB 279, 279-280 (2016). (supervisor's statement that employees' organizing activities "made things worse" sent clear message to employees of potential adverse action due to organizing and violated Section 8(a)(1)); *Beverly Enterprises*, 310 NLRB 222, 237 (1993), *enfd.* in rel. part 17 F.3d 580 (2d Cir 1994) (supervisor's statement that, if employees thought things were bad now, they should just vote yes for the union and things will get worse was an unlawful coercive threat that employees would be sorry for bringing a union in). Here, Bennett did not directly say things would get worse if employees brought the Union in. However, her statements, taken in their totality, implied such an effect. Bennett described for Thompson how, upon becoming store manager, Bennett completely changed the store environment and always supported the employees. She then said the petition filing caused another change in the store environment and told Thompson she would quit if the union came in. The clear implication of her statements is that working conditions would worsen if employees chose to have the Union represent them. Accordingly, the statements violate Section 8(a)(1).

III. DID BENNETT VIOLATE SECTION 8(A)(1) DURING A JUNE 23 CONVERSATION WITH KISKA AFTER THE UNION FILED A PETITION FOR AN ELECTION?

FINDINGS OF FACT

Also on June 23, Store Manager Bennett spoke to Partner Kiska in the back room of the store. Bennett asked Kiska if she had heard about the Union. Kiska said yes and that she supported it. Bennett told her that Bennett used to work for a union and the union ended up firing her. Bennett said that a union causes a lot of negative things to happen. She reiterated that unions can make bad things happen and can bring bad things. She added that she would not be able to support employees in the same way because she could not talk one-on-one to partners if a union came in. Bennett also told Kiska that she would leave the store if the employees unionized.¹¹

ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1) by Bennett's repeated threats to Kiska during their June 23 conversation. In particular, the General Counsel alleges that Bennett threatened Kiska that Bennett would leave the store if employees voted to be represented by the Union, thereby implying things would get worse if she left the store. The General Counsel also alleges that Bennett threatened Kiska that Kiska would not be able to have conversations with Bennett and Bennett would not be able to support employees in the same way if there was a union in the middle of their relationship. Finally, the General Counsel alleges that Bennett threatened Kiska that unionization could bring a lot of negative

changes to the facility.¹²

Bennett's comment to Kiska that a union causes a lot of negative things to happen violates Section 8(a)(1). Her statement couched the projection of "negative things" as a certainty, not a possibility, and conveyed that employee unionization only could result in a negative outcome. This rendered the statement unlawful. *North Star Steel Co.*, 347 NLRB 1364, 1366 (2006) (employer's statement that, if the employees selected the union, it would be a "bad divorce" was unlawful because the comment reasonably suggested a negative, retaliatory message that there would be changes in the relationship between the employer and employees with repercussions to employees). Moreover, Bennett did not provide Kiska with objective facts as to the potential negative effects of employees' unionizing. *Cadillac of Naperville*, 368 NLRB No. 3, slip op. at 3 (2019) (owner's comment that "things would not be the same" if employees went on strike was unlawful, because the statement did not communicate any objective facts or predictions as to the effects of a potential strike and instead threatened that a strike would produce only negative consequences); *Cf. Ferguson-Williams, Inc.*, 322 NLRB 695, 698-699 (1996) (no violation where supervisor told employee that an airline company had gone out of business and that unions cost companies' and employees' jobs).

However, Bennett's comment that she would not be able to support employees in the same way because she could not talk one-on-one to partners if a union came in is lawful under *Tri-Cast Inc.*, 274 NLRB 377 (1985). In that case, the Board held that an employer did not violate Section 8(a)(1) by statements during an election campaign effectively conveying that, when employees select a union to represent them, the relationship that existed between the employees and employer will not be as before. Likewise here, Bennett was factually advising Kiska, somewhat unartfully, of how union representation will change the employees' relationship with their employer. Thus, the statement did not violate Section 8(a)(1). *Holy Cross Hospital*, 370 NLRB No. 16, slip op. at 1 fn. 3 (2020); see also *Office Depot*, 330 NLRB 640, 642 (2000) (employer's statement to employees that they would not be able to communicate with management in the same way was not unlawful, because no threat exists when an employer explains to employees that, when they select a union to represent them, the relationship that existed between employees and the employer will not be the same as it was before).

For the same reasons stated above concerning Bennett's unlawful statements to Thompson, Bennett's statement to Kiska that Bennett would leave the store if the employees' unionized violated Section 8(a)(1).¹³

IV. DID THE RESPONDENT VIOLATE SECTION 8(A)(1) DURING ITS JULY 19 AND 20 MEETINGS WITH EMPLOYEES CONCERNING THE UNION?

FINDINGS OF FACT

Employees at the West Allis store can be scheduled by man-

¹¹ Tr. 112-114. I credit Kiska's testimony as it appeared sincere and reliable. Her testimony also is uncontroverted because Bennett testified but not about this conversation.

¹² Complaint paragraphs 6(a), 6(b), and 6(c).

¹³ I further note this comment was made shortly after Bennett had unlawfully told Kiska that unions caused negative things. The comment provided an example of one of those negative things which would occur if partners unionized.

agers for “non-coverage” time, or time reserved for meetings, counting of inventory, or other work tasks not involving being on the floor and serving customers. Employees are paid for their non-coverage time. On July 19 and 20, employees at the West Allis store, including Thompson and Kiska, were scheduled for 2 hours of non-coverage time to attend a meeting run by Ryan and Bennett concerning the union petition. Each meeting lasted about 1 ½ hours. Neither supervisor informed the employees that their attendance at the meetings was voluntary.¹⁴

A. The July 19 Meeting

On July 19, Ryan and Bennett met with Thompson and four other employees in the back room of the store. Thompson recorded what was said at the meeting. Bennett began the meeting with a coffee tasting. She then discussed why she ended up working for the Respondent and gave employees the opportunity to share their reasons for working there as well. Thereafter, Ryan advised the employees the purpose of the meeting was for her and Bennett to discuss the Respondent’s “union position” and provide facts concerning the upcoming union vote.¹⁵

Ryan first explained that, if employees voted to unionize, the Respondent and the Union would negotiate a contract addressing pay and benefits. She advised the employees that, on average, it takes 415 days to reach a first contract after employees vote a union in. Ryan noted that 415 days was over a year and asked the employees if they remembered what barista pay was a year earlier. Bennett responded that it was \$9 per hour. Then, in reference to the already announced wage increase planned by the Respondent, Bennett noted the increase would be \$6 per hour (to \$15 per hour). Ryan asked hypothetically if they would get a \$6 pay increase in the next year in a collective-bargaining agreement and said she did not know. Bennett brought up the one Respondent store in Canada where employees had unionized. She said the collective-bargaining agreement reached there was not a guarantee of what would happen at other organizing locations. She stated the Canada contract had a 3-year term and provided a one-time wage increase that just barely covered union dues and fees. She said wages were otherwise flat for the duration of the contract. Bennett then told the employees that “[a]lthough Starbucks recently announced a historic wage increase, the increase will not apply to the union partners because wages are governed by the...collective-bargaining agreement.”¹⁶

Regarding benefits, Ryan told the employees “your benefits don’t change” during the 415 days. Bennett stated that it would be unlawful for the Respondent to take away benefits or to add benefits when a contract had not been reached. She later told the employees that the Respondent could not provide West Allis

partners with the new benefit of paying employees’ transportation costs to travel to another state to obtain an abortion. She said federal law prohibited the Respondent from changing benefits and the store could not provide an abortion benefit. She added that voting a union in and negotiating a contract “puts you in this weird time warp. You can’t take or receive any other benefits. That would really hurt my heart.” Bennett then told the gathered employees that the Respondent had never taken away their benefits, but the union could choose to take benefits away from them. She concluded by saying that the Respondent was new to unionization and that is why negotiations would take so long. She noted another nearby store which had unionized a couple of months earlier but where negotiations had not begun, as well as that partners there were not getting any new benefits.¹⁷

Ryan and Bennett also repeatedly spoke about the gathered employees’ ability to reach out to them with any issues. Specifically, Ryan stated:

We need more time and space to talk, because if there are things going on in a store—and this is separate from anything going on—I want to help you. And if there are things that are going wrong, just tell me. Right? If there are things that you’re not feeling good about or things that facility-wise or customers or anything like that, just give me a call. That’s the kind of stuff that as a DM (district manager), I have 13 stores, and every store I have about 30 partners, which is a lot of partners. And I want to make sure everyone here knows that if there’s something going on, you just have to let me know. Can I change everything? Un-uh. I can’t. Right? You call me tomorrow and say, Meg, I would like to make, you know, a hundred dollars an hour, I probably can’t do that. But if you say, hey, there’s a customer that comes in every day, that is disruptive. I can help that. Right? So I just wanted to clear that too. I think that there’s sometimes that I don’t want everyone to feel they can’t use me as a resource.¹⁸

Later in the meeting, Ryan went on:

I would also say, in my opinion right now, we’re doing it. Right? I’m sitting here and we’re (inaudible) listening to you. And that’s the other thing that I want to reiterate is that if there’s something you need, like, let’s talk about it. Right? I also want to reiterate that a union is a business. And they’re -- they’re representation and you have to pay for that. So, you pay them in your dues; right? So, you know, in my opinion, we sit here and do this, and I want to help. You have two leaders in front

¹⁴ Tr. 59–61, 99–100, 116; GC Exh. 13. I do not credit Ryan’s incredible testimony that employee attendance at the meetings was voluntary. Ryan specifically testified that all shifts were voluntary and employees “can show up or they don’t have to show up if there is something pending.” (Tr. 154.) I further note that Ryan conceded that she and Bennett “communicated to partners their attendance at the meetings by putting in their work schedules.” (Tr. 150.) I find that employee attendance at the meetings was mandatory.

¹⁵ Tr. 60–62; GC Exhs. 4, 6. GC Exh. 4 is Thompson’s audio recording of the meeting. GC Exh. 6 is a transcript of that recording with Thompson’s additions as to the names of the speakers. Citations in this

decision going forward are to that transcript of the recording, which accurately reflects what was said on the substantive matters at issue in this case. I further note that, in its brief, the Respondent did not identify any portions of the transcript that it was claiming were inaccurate, as discussed at the hearing. (Tr. 70–71.)

¹⁶ GC Exh. 6, p. 18, lines 20–25; p. 19, lines 1–15; p. 20, lines 1–25; p. 21, lines 1–21.

¹⁷ GC Exh. 6, p. 19, lines 16–25; p. 24, lines 23–25, p. 25, lines 1–2, 11–13, and 18–25.

¹⁸ GC Exh. 6, p. 14, lines 23–25, p. 15, lines 1–17.

of you who want good things. And, again, I don't see that you need somebody to be -- do that for you in this situation. I don't think there are in my opinion, many things but I can't sit here and talk to you I genuinely mean that. Again, I've been a partner for a long time. Like if there's things that are not going well, if you want to talk about your pay, let's talk about your pay. Or if you want to talk about things that are broken, or if you want to talk about how I can fix it, like, I believe we can do that in this setting or one-on-one.¹⁹

And Ryan added:

I would say -- if there's things that you want that you can come talk to me about, I'm available; right? So if there's things that you're, like, man, this is not working, I want to know. And genuinely. The reality of this situation is whatever we decide, I'm still going to be here; right? Just because -- if we decide to vote for union representation, I don't go away. Like, good and bad news for some of you all. I don't know what to tell you. But I'm here. And the fact that I can still impact a lot -- again, if there's things that aren't sitting well with you, store environment-wise, just talk to me. I want to help you. Genuinely; right?²⁰

Ryan also told the group that a union was a business, made money by employees' dues, and they would be paying someone to represent them in the store. Ryan said she thought the Respondent already did that and that there were things she and Bennett wanted to talk about with employees. She added that she wanted everyone to know that she wanted what was best for partners. She concluded by saying it did not do her any good to have partners in stores who were unhappy with their pay or benefits but that "it does make me nervous because I don't know what this is going to look like."²¹

Ryan also offered to provide any interested employees with the phone number of higher-level supervisors. She added that if an employee called her and said, "I would like to do X, Y, and Z," she "would try her darndest to make it happen." She said she did not think they needed someone to do that for them. She told the employees she would pass out her business cards so they would have her phone number and they should let her know if there were things happening at the store that partners were upset about. Ryan also stated she wanted to make sure the environment was what it needs to be and that she wanted to help support the employees.²²

Finally, Ryan noted an earlier comment from Bennett that she understood the environment at another Respondent store where partners filed for a union election had changed/was not the same. Ryan stated the store manager did not want to be there. Then

Bennett clarified that the union petition was not the reason the store manager did not want to be in the store but rather "[i]t's literally the environment...which this has created...It's not...what the right leaders signed up for."²³

B. The July 20 Meeting

On July 20, Ryan and Bennett met with Kiska and five other employees, again in the back room of the West Allis store. Kiska recorded what was said at the meeting. Ryan and Bennett followed a similar script from the prior day's meeting. The two supervisors began by describing their employment with the Respondent and giving the attending employees the opportunity to do the same. Bennett then advised them that the purpose of the meeting was to discuss the union petition which had been filed.²⁴

Bennett explained to the employees that, if they voted yes to a union, they would enter a bargaining phase. She stated again that the phase usually takes 415 days on average and that the Respondent could not add or take away any benefits during that phase. She said it would be unethical for the Respondent to take anything away from employees, but also that the Respondent could not give them anything until they reached an agreement. She added that they would "stay in this weird kind of balance." She mentioned a posting in the back of the store which discussed new benefits other stores were receiving. She told the employees they would not get the benefits right now, because they were in a waiting period. Ryan then said she "heard some comments that it's like union busting" but that it actually was the law under the National Labor Relations Act as enforced by the NLRB. She said the law was passed to protect both sides.²⁵

Later in the meeting, Ryan noted that the Respondent had recently announced an historic wage increase, but the increase would not apply to unionized partners because wages would be governed by the collective-bargaining agreement. She said the "partners said they wanted X amount of dollars. They get X amount of dollars for the next three years." Ryan and Bennett then said that the starting rate for new hires a year earlier was \$9.17 per hour but it would be \$15 per hour in August. Bennett added "[t]hat is \$6 in less than a year." Ryan told the employees that it would be "more than a year you're not changing anything. Just think about if that had been the case again a year ago, are you going to be \$6 more in a year? I don't know." She also said, "I don't want to say, hey, you're not going to get what everyone else gets." She added that she did not know the last time the Respondent had taken away a benefit from partners. Bennett then commented that the gathered employees were unable to receive the abortion transportation benefit the Respondent had an-

¹⁹ GC Exh. 6, p. 33, lines 11–25, p. 34, lines 1–9.

²⁰ GC Exh. 6, p. 47, lines 23–25, p. 48, lines 1–11. Just prior to these statements by Ryan, Bennett twice asked the employees "what are you looking for?" GC Exh. 6, p. 47, lines 13–14 and 18–20.

²¹ GC Exh. 6, p. 49, lines 21–25; p. 50, lines 1–4.

²² GC Exh. 6, p. 53, lines 17–25; p. 53, lines 1–3; p. 55, lines 19–25; p. 56, lines 1–8.

²³ GC Exh. 6, p. 50, lines 5–21.

²⁴ Tr. 115–116; GC Exhs. 9, 11. GC Exh. 9 is Kiska's audio recording of the meeting. GC Exh. 11 is a transcript of that recording with Kiska's additions as to the names of the speakers. Citations in this decision going forward are to that transcript of the recording, which accurately reflects what was said on the substantive matters at issue in this case. I further note that, in its brief, the Respondent did not identify any portions of the transcript that it was claiming were inaccurate, as discussed at the hearing. (Tr. 122.)

²⁵ GC Exh. 11, p. 17, lines 9–25; p. 18, lines 1–25.

nounced, calling that inability “heartbreaking.”²⁶

Bennett spoke about a collective-bargaining agreement at a Respondent store in Canada. She said that the agreement required employees at the store to work there exclusively. She stated the agreement prohibited partners from picking up shifts at other stores or other partners from picking up shifts at the unionized store. She added that the Respondent would protect the partner experience for everyone, because it would not want a partner to have a different experience at one store from another store.

Bennett also reminded the employees about how they had a voice through “partner surveys” and that the Respondent’s update to the dress code came from complaints in the partner surveys. However, she told the group, they would not get to use the updated dress code “right now.” She added that it was an example of how things change in environments where employees elected to file a union petition.²⁷

At another point, Bennett told the group that “there are so many things that I wish that I knew so I could help fix. If there’s things going on that you’re like, yeah, this can’t be this way, just call me, right? My phone is literally always on.” She added she loved sitting at the table talking to employees and loved that they could pick up the phone. She volunteered to provide the partners with the phone numbers of supervisors in Seattle. She concluded by telling them “you’ve got to believe me when I say I don’t often get calls from partners that are, like, I need your help, but if I did, I would be there.”²⁸

Similarly, Ryan told the employees that, if something was going on, she had to know about it, and they should call her. She identified being upset with pay or problems with facilities in a store as specific problems she could help with if she knew about them. She added that, because she was responsible for 13 stores with roughly 30 partners in each store, she did not know everything that happens in every store. Ryan then said that “genuinely if there’s things that are upsetting you that you’re, like, I want to change this, like, just give me a call.”²⁹

Finally, Ryan and Bennett told the partners that, at certain stores in Buffalo where employees had unionized, the “store environment has suffered.” She asked employees to compare what their store environment had been over the past month versus the environment prior to then. She said that they should think about 415 plus days of the current environment. Bennett added that she wanted to be able to support the partners, but the petition “takes everything away from that, from that ability to support you in the ways that I[‘m] used to.” She mentioned another store manager who did not want to go to a store anymore because the environment had changed so much following a union petition. Ryan reiterated that the petition had changed the store environment there and it was “the nature of what happens when you’re going through something that’s ambiguous, and partners have a lot of opinions.”³⁰

ANALYSIS

A. Should the Respondent’s Motion to Dismiss the General Counsel’s Allegations Concerning The July 19 Meeting Be Granted?

1. Procedural Background

The Union’s original charge, filed June 24, 2022, and its first amended charge, filed July 11, 2022, alleged in relevant part that the Respondent violated Section 8(a)(1) within the past 6 months by: (1) forcing employees to convene on paid time to listen to the Employer’s position regarding union activity; (2) prohibiting employees from engaging in speech protected by Section 7 of the Act; and (3) threatening or impliedly threatening adverse consequences if the employees support a union, engage in union activity, or select a union to represent them. On September 30, 2022, the General Counsel issued the original complaint in this case containing the alleged unfair labor practices by Bennett during her June 23 conversations with Thompson and Kiska. The complaint set a hearing date of January 31, 2023, but, on December 15, the General Counsel postponed the hearing indefinitely. On December 20, the General Counsel rescheduled the hearing for April 18, 2023.

On March 31, 2023, the General Counsel issued an amendment to the complaint adding allegations of Section 8(a)(1) violations based upon the Respondent’s July 19 meeting with employees. The allegations included that the meeting itself was an unlawful captive audience meeting. They also included that, during the meeting, the Respondent, by Ryan, (1) repeatedly threatened loss of benefits because of the employees’ union organizational activity or future represented status; (2) by repeatedly soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union organizational activity; (3) impliedly threatened that employees would lose their direct relationship with management if they selected the Union as their representative; and (4) played a video that impliedly threatened that employees would lose their direct relationship with management if they selected the Union as their bargaining representative. Finally, the new allegations included that Bennett violated Section 8(a)(1) during the same meeting by threatening employees that union activity causes a negative environment at the West Allis store.³¹

On April 5, 2023, the General Counsel rescheduled the hearing at the request of the Respondent, this time to June 5, 2023.

On May 11, 2023, the General Counsel amended the complaint a second time, adding Bennett as another individual who made the alleged unlawful threats at the July 19 meeting.

After I opened the hearing in this case on June 5, 2023, the Respondent filed a motion to dismiss the complaint allegations regarding the July 19 meeting.³² The Respondent argues that the allegations are time barred by Section 10(b) of the Act and are

²⁶ GC Exh. 11, p. 26, lines 5–25; p. 27, lines 1–25; p. 28, lines 1–9.

²⁷ GC Exh. 11, p. 33, lines 6–23.

²⁸ GC Exh. 11, p. 23, lines 7–24.

²⁹ GC Exh. 11, p. 33, lines 24–25; p. 34, lines 1–14.

³⁰ GC Exh. 11, p. 42, lines 13–25; p. 43, lines 1–25; p. 44, lines 1–4.

³¹ Section 102.17 of the Board’s Rules and Regulations permits the Regional Director to amend a complaint prior to the hearing “upon such terms as may be deemed just.”

³² ALJ Exh. 1.

beyond the scope of the Union's unfair labor practice charge.³³

2. The Merits of the Respondent's Motion

The complaint amendments the General Counsel made in this case involve alleged unfair labor practices by the Respondent after, not before, the events alleged in the Union's timely filed original charge. Specifically, the Respondent's July 19 meeting with employees concerning the union petition occurred after Bennett's June 23 conversations with Thompson and Kiska. As a result, the appropriate test to determine if the amendments are proper is that set forth by the Board in *Redd-I, Inc.*, 290 NLRB 1115, 1118 (1988).³⁴

Under *Redd-I*, Section 10(b) does not bar an otherwise untimely complaint allegation if the allegedly unlawful conduct is closely related to the allegations in a timely filed charge.³⁵ *Charter Communications, LLC*, 366 NLRB No. 46, slip op. at 2 (2018), citing *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014). To determine if an otherwise untimely allegation is closely related to the timely charge, the Board considers: (1) whether the otherwise untimely allegation and the allegations in the timely-filed charge are of the same class, "i.e., whether the allegations involve the same legal theory and usually the same section of the Act"; (2) whether the otherwise untimely allegation and the allegations in the timely-filed charge arise from the same factual situation or sequence of events; and (3) whether the respondent would raise the same or similar defenses to the otherwise untimely allegation and the allegations in the timely-filed charge.

As to the first *Redd-I* factor, the allegations in the Union's timely charges and the complaint amendments are of the same class. All of the allegations involve Section 8(a)(1) of the Act. The charges allege unlawful captive audience meetings, and the complaint amendment alleges an unlawful captive audience meeting. The charges allege threats of adverse consequences due to union support or activity or employees choosing to be represented by the union. This allegation is broad enough to include the complaint amendments detailing those adverse consequences, including that the Respondent threatened loss of benefits for union organization activity; impliedly threatened on two occasions that employees would lose their direct relationship with management; and employees' union activity would cause a negative environment at the store. Even the promise-of-benefit allegation touches on the same class as it is the inverse of the adverse consequences allegations: if employees chose instead not to be represented by the Union, they would receive benefits, not adverse consequences. Thus, factor 1 supports finding the amendment proper.

Regarding the second *Redd-I* factor, the General Counsel must show that the timely and untimely allegations "demonstrate similar conduct, usually during the same time period with a similar object," or there is a causal nexus between the allegations, and they are part of a chain or progression of events, or they are part of an overall plan to undermine union activity. *Carney Hospital*, 350 NLRB 627, 630 (2007). It is not sufficient to show merely that the events occurred close in time, during the same union organizing campaign, or in response to a campaign. *Ibid*.

In *Carney*, the Board concluded that allegations were not factually closely related and thus time barred by Section 10(b). The Board noted that the timely charge and untimely amended charge allegations did not involve similar conduct and were not part of a chain or progression of events. The timely charge alleged a Section 8(a)(3) suspension of an employee. The untimely allegations were Section 8(a)(1) violations, including interrogations, threats of job loss, surveillance, and threats that collective bargaining would be futile. The suspended employee was not subjected to any of that alleged conduct. Although the employee was subjected to an alleged threat of loss of benefits, the supervisor making that threat was not involved in the suspension and the two events occurred 6 weeks apart. Finally, the Board held that there was no showing that the events were part of an organized plan to resist union organization, because the alleged 8(a)(1) violations and the suspension were separate actions carried out independently by different supervisors.

I conclude that the second *Redd-I* factor likewise supports allowing the amendment. Factually, the allegations involve similar conduct: supervisors meeting with employees to discuss the union organizing campaign and making threats that violate Section 8(a)(1). The same two supervisors—Ryan and Bennett—are alleged to have made the unlawful statements. The alleged unlawful conduct occurred within a limited, 4-week period. The alleged conduct had a similar object: threatening and coercing employees so they would not support the Union. The allegations also all involve threats made by Ryan and Bennett to Thompson and Kiska, either one-on-one or in group meetings. These facts are distinguishable from those in *Carney*.

Finally, as to the third *Redd-I* factor, the Respondent asserted one defense that was identical to both the timely allegations involving Bennett's conversations with Thompson and Kiska and the allegations involving the July 19 meeting. That defense was that the supervisors' statements were lawful under Section 8(c) of the Act.

Accordingly, I conclude that the General Counsel's amendment to the complaint to add allegations of unlawful conduct by supervisors at the July 19 meeting was proper. The Respond-

³³ On May 31, 2023, prior to the hearing, the Respondent filed with the Board the same motion to dismiss the General Counsel's allegations concerning the unlawful threats made at the July 19 meeting. The Respondent initially filed the motion with the Division of Judges. However, because the motion to dismiss was filed prior to the hearing, the Board had jurisdiction over it. See Section 102.24 of the Board's Rules and Regulations. Thus, I referred the motion to dismiss to the Board. On June 29, 2023, the Board denied the Respondent's motion without prejudice to the Respondent's right to renew the same arguments with me.

³⁴ The parties agree that the Respondent's motion to dismiss should be evaluated under *Redd-I*.

³⁵ *Redd-I* also sets forth a requirement that the untimely allegations occurred "within six months before" the filing of a charge. However, where, as here, the new allegations involve events after those alleged in the timely charge, the new allegations need only be closely related to the allegations in the timely charge. See *National Licorice Co. v. NLRB*, 309 U.S. 350, 369 (1940) ("we can find no warrant in the language or purposes of the Act for saying it precludes the Board from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending at the Board.")

ent's motion to dismiss is denied. *Precision Concrete*, 337 NLRB 211, 212 (2001) (all *Redd-I* factors met, and complaint amendment was proper, where all allegations involved the same section of the Act and theories of threatening conduct that interfered with employees' Section 7 rights to choose a union; all allegations involved types of threatening conduct by supervisors within a half-year timespan; and one common defense was that statements were not reasonably coercive), enf. denied 334 F.3d 88 (D.C. Cir. 2003). See also *SKC Electric, Inc.*, 350 NLRB 857, 857–859 (2007) (untimely interrogation allegation was factually related to timely denial of training due to union activity allegation, in part because actions targeted the same employee and occurred very close in time).

B. Should the General Counsel's Motion to Amend the Complaint To Include Allegations Concerning the July 20 Meeting Be Granted?

After the hearing opened, the General Counsel moved to amend the complaint a third time, seeking to add allegations related to the Respondent's July 20 meeting with employees. Given that posture, Section 102.17 of the Board's Rules and Regulations requires me to rule on the General Counsel's motion. The Respondent filed a written opposition at the hearing.³⁶

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

I conclude that, on balance, the three factors support allowing the General Counsel's amendment. As to surprise or lack of notice, the General Counsel advised the Respondent of the existence of Kiska's recording of the July 20 meeting, and provided the recording to the Respondent, 6 days in advance of the hearing. On that same date, the General Counsel also notified the Respondent of her intent to move to orally amend the complaint at the hearing. Moreover, the existence of the recording meant that far less time would be needed to prepare a defense. The recording eliminated the need to prepare witness testimony concerning what was said at the meeting. Under these circumstances, I find the notice provided by the General Counsel to be sufficient.

However, the General Counsel offered no excuse for why the

existence of Kiska's recording was not discovered earlier. As noted, the case had been set for hearing on two different prior dates. The first amendment to the complaint, concerning the July 19 meeting, was issued on March 31, 2023. Thus, the General Counsel was aware as of that latter date that the Respondent had conducted at least one meeting with several employees, but not all of them, in attendance concerning the Union's petition filing. That put the General Counsel on notice of the possibility of other Respondent meetings with employees. Contemporaneously inquiring of other witnesses whether they attended such meetings, and recorded them, likely would have resulted in a timelier amendment.

Finally, the matter was fully litigated. The Respondent questioned multiple witnesses concerning the July 20 meeting. At no point did Respondent's counsel ask me for additional time to prepare a defense to the July 20 allegations.

The Respondent moves to dismiss the third amendment to the complaint (which I treat as an opposition to the General Counsel's motion to amend) on the same bases as it moved to dismiss the first amendment regarding the July 19 meeting. For the same reasons discussed above, I find no merit to the Respondent's opposition.

For all these reasons, I grant the General Counsel's motion to amend the complaint to include the allegations concerning the July 20 meeting.³⁷

C. Did Ryan and Bennett's Statements in the July 19 and 20 Meetings Violate Section 8(A)(1)?

The General Counsel's complaint alleges that the Respondent, by Ryan and Bennett, repeatedly violated Section 8(a)(1) during their July 19 and 20 meetings with employees concerning the union petition.³⁸

1. Solicitation of Grievances

The General Counsel's complaint first alleges that Ryan and Bennett repeatedly solicited employee complaints and grievances, thereby promising them increased benefits and improved terms and conditions of employment if they refrained from union organizational activity.³⁹

An employer's solicitation of grievances during a union organizing campaign is unlawful when it "carries with it an implicit or explicit promise to remedy the grievances and impress[es] upon employees that union representation [is] . . . [un]necessary." *Tesla, Inc.*, 370 NLRB No. 101, slip op. at 6 (2021), citing *Albertson's, LLC*, 359 NLRB 1341, 1341 (2013) (internal quotations omitted; alterations in original), affd. and

³⁶ ALJ Exh. 2.

³⁷ In reaching this conclusion, I acknowledge that the General Counsel technically failed to include the July 20th meeting date in the amendment to paragraph 8 containing the substantive Section 8(a)(1) allegations. (Tr. 31.) Nonetheless, I conclude that a de facto amendment was made to the complaint to include the July 20 date, because the allegations were fully litigated, and the Respondent actively defends against the allegations as to that meeting. See *Hi-Tech Cable Corp.*, 318 NLRB 280 (1995) (unalleged statements by two managers violated 8(a)(1) where the complaint alleged other 8(a)(1) violations, including an interrogation by one of the same managers in the same conversation, and the respondent did not object to the testimony about the statements, cross-examined the witnesses and presented its own witnesses to testify about them, and

addressed their legality in its posthearing brief), enf. in part 128 F.3d 271 (5th Cir. 1997).

³⁸ Complaint paragraphs 8 and 9. The General Counsel's complaint also alleges that the meetings on June 23, July 19, and July 20 were captive audience meetings and advocates for a change in Board law to hold that such meetings violate Section 8(a)(1). An administrative law judge's duty is to apply Board precedent which has not been overruled by the Supreme Court or the Board itself. See *Western Cab Co.*, 365 NLRB No. 78, slip op. at 1 fn. 4 (2017). Because captive audience meetings currently are lawful under Board precedent, I dismiss complaint paragraphs 5 and 7.

³⁹ Complaint paragraph 8(b).

incorporated by reference 361 NLRB 761 (2014). “[I]t is not the solicitation of grievances itself that is coercive and violative of Section 8(a)(1), but the promise to correct grievances . . . that is unlawful.” *Uarco, Inc.*, 216 NLRB 1, 2 (1974); see also *Maple Grove Health Care Center*, 330 NLRB 775, 775 (2000), citing *Capitol EMI Music*, 311 NLRB 997 (1993), *enfd. mem.* 23 F.3d 399 (4th Cir. 1994). “The solicitation of grievances alone is not unlawful, but it raises an inference that the employer is promising to remedy the grievances.” *Amptech, Inc.*, 342 NLRB 1131, 1137 (2004), *enfd.* 165 Fed. Appx. 435 (6th Cir. 2006); *Blue Grass Industries*, 287 NLRB 274, 274 fn. 4 (1987); *Uarco*, *supra*.

At the July 19 and 20 meetings, Ryan and Bennett repeatedly told employees that they wanted to help them with anything going wrong at the West Allis store. They told employees that they should call them and let them know when they needed something or when problems surfaced at the store, and they would fix the problems. They also offered the employees the opportunity to talk to higher-level managers at the Respondent’s headquarters about any issues. Thus, the supervisors solicited grievances, and both explicitly and implicitly promised to remedy them. *Laboratory Corp. of America Holdings*, 333 NLRB 284, 284–285 (2001) (vice president’s query to an employee concerning what changes could be made to make her and other employees happy, giving the employee his personal phone number, and telling her to call him and he would fix any problem violated the Act).

The Respondent essentially concedes that Ryan and Bennett solicited grievances and offered to remedy them, but contends their statements were lawful because they were following a past practice of addressing employee grievances. An employer with a past practice of soliciting employee grievances may continue to do so during an organizing campaign as long as the practice remains essentially the same. *Longview Fibre Paper & Packaging, Inc.*, 356 NLRB 796 (2011). However, an employer cannot rely on past practice if it “significantly alters its past manner and methods of solicitation during the campaign.” *House of Raedford Farms*, 308 NLRB 568, 569 (1992).

I do not find merit to the Respondent’s argument. The two meetings at which Ryan and Bennett solicited grievances were group meetings of employees to discuss the union petition. Each meeting lasted approximately 1 ½ to 2 hours. Not only did they offer to help solve any problems, they also offered contact information for higher-level managers at the Respondent’s Seattle headquarters. Given this, the two meetings were significantly different than Ryan’s and Bennett’s regular meetings with employees one-on-one where the two generally checked in on how employees were doing. Their testimony established nothing

more than, as would be expected, the supervisors spoke to employees as they were working together at the West Allis store. See *Mercedes-Benz of Orlando, Inc.*, 358 NLRB 1729 (2012), *reaffd.* 361 NLRB 1238 (2014), *enfd.* 814 F.3d 859 (7th Cir. 2016). (past practice defense not established by employer, despite general manager’s open-door policy and regular conversations with individual employees on the workroom floor, where supervisor had not previously and systematically sought to learn of employee concerns by calling them into his office and questioning them in the presence of the service director), *affd.* and incorporated by reference 361 NLRB 761 (2014). Similarly, no evidence establishes that, prior to the union petition being filed, Ryan and Bennett met together with groups of employees to ask them what issues they had and then offered to fix them.

As a result, I conclude that the Respondent violated Section 8(a)(1) at the July 19 and 20 meetings by soliciting grievances and promising to remedy them.⁴⁰

2. Loss of benefits

The General Counsel’s complaint also alleges that Ryan and Bennett repeatedly threatened employees with the loss of benefits because of their union organizational activity or future represented status. Specifically, the General Counsel argues that the supervisors threatened employees with the loss of abortion benefits, the ability to work in other stores, and the ability to participate in partner surveys concerning their working conditions.⁴¹

As to the previously announced abortion travel expense benefit, the supervisors said in the July 19 meeting that it could not be provided to the West Allis store employees because federal law prohibited the Respondent from changing benefits. In the July 20 meeting, the supervisors again told employees that they would not receive the abortion benefit, but did not attribute it to compliance with federal law or any other reason.

At the July 20 meeting, Bennett told employees that partners in the unionized Canadian store could not work at other stores, nor could partners from other stores work at the unionized location. She added that the Respondent did not want a partner to have a different experience at one store from another store. At the same meeting, Bennett reminded the employees how the Respondent had changed the dress code policy in light of their complaints in a partner survey, but they would not get the benefit “right now” and it was an example of the changed environment when employees file a union petition.

I conclude that Bennett’s statement that the West Allis employees would not get the change in the dress code policy “right now” violated Section 8(a)(1). As previously discussed⁴², Bennett attributed the lack of that benefit implementation solely to

⁴⁰ The General Counsel’s complaint also alleges that, by statements made by Ryan and Bennett, and in a video played, in the July 19 and July 20 meetings, the Respondent violated Sec. 8(a)(1) by impliedly threatening that employees would lose their direct relationship with management if they selected the Union as their bargaining representative. However, these allegations are premised upon the Board overruling its decision in *Tri-Cast Inc.*, 274 NLRB 377 (1985). In that case, the Board held lawful an employer’s statements during an election campaign effectively conveying that, when employees select a union to represent them, the relationship that existed between the employees and employer will not be as before. Because *Tri-Cast* is current Board law, I apply it here, conclude

that the alleged statements are lawful, and dismiss complaint paragraphs 8(c) and 8(d).

⁴¹ The General Counsel argues that Ryan and Bennett also threatened employees repeatedly with the loss of a wage increase due to the union organizational activity. However, because the thrice amended complaint does not contain that specific allegation, I decline to address whether the Respondent violated the Act in that manner. The Respondent was not put on notice of and did not defend against this allegation.

⁴² See Sec. II, B above dealing with Bennett’s unlawful threat of loss of benefits to Thompson on June 23.

the union petition being filed, which is unlawful. *SNE Enterprises, Inc.*, 347 NLRB 472, 480 (2006); *Grouse Mountain Lodge*, 333 NLRB 1322, 1324 (2001), quoting *Atlantic Forest Products*, 282 NLRB 855, 858 (1987); *Flamingo Hilton-Laughlin*, 324 NLRB 72, 104–105 (1997).

I also find that Bennett’s statement concerning partners’ inability to take on shifts outside of their unionized store likewise was unlawful. Bennett did not communicate to partners that this working condition would be subject to contract negotiations if partners at the West Allis store unionized. *Flamingo Hilton-Laughlin*, supra. Instead, she suggested that the Respondent would have the shift provisions in the Canadian collective-bargaining agreement adopted in all of the other facilities of the Respondent so the partner experience would be the same.

Finally, I also conclude that the supervisors’ statements concerning the abortion travel expense benefit violate Section 8(a)(1). Again, the supervisors did not explain to the employees that this previously-announced benefit would later be implemented with or without the employees’ unionizing and the sole reason for the implementation postponement was for the Respondent to avoid the appearance of influencing the election’s outcome. *Grouse Mountain Lodge*, 333 NLRB 1322, 1324 (2001), quoting *Atlantic Forest Products*, 282 NLRB 855, 858 (1987).

The Respondent unlawfully threatened a loss of benefits in all the manners alleged in the General Counsel’s complaint.

3. Threats that union activity caused a negative environment at the West Allis store.

Finally, the General Counsel’s complaint alleges that the Respondent violated Section 8(a)(1) during the July 19 and July 20 meetings when Ryan and Bennett threatened employees that their union activity caused a negative environment at the West Allis store.⁴³

At the meetings, Ryan and Bennett told the employees about a Respondent supervisor at another store who no longer wanted to be there due to the environment changing after a union petition was filed. Bennett then attempted to clarify that it was not the petition causing the manager not to want to be at the store, but “literally the environment.” They also reported about the environment suffering at certain stores in the Buffalo area where employees had unionized. They asked the employees to compare their store environment before and after the union petition had been filed and whether they wanted the current environment to last 415 days.

The supervisors’ statements either explicitly indicated or implied that the petition filing was causing negative effects in the West Allis store. The statements were not, as in *Tri-Cast* and argued by the Respondent, a prediction of a change in the direct relationship employees had with the supervisors were they to choose to be represented by the Union. Accordingly, the statements of Ryan and Bennett were unlawful. *Hendrickson USA, LLC*, 366 NLRB No. 7 (2018) (employer violated Section 8(a)(1)

when it included in a PowerPoint presentation that, if employees were to elect the union, “the culture will definitely change,” “relationships suffer,” and “flexibility is replaced by inefficiency.”), enf. denied *Hendrickson USA, LLC v. NLRB*, 932 F.3d 465 (6th Cir. 2019).⁴⁴

CONCLUSIONS OF LAW

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

2. The Charging Party, Chicago & Midwest Regional Joint Board, Workers United/SEIU, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act on June 23, 2022, by:

(a) Threatening employees that they would lose benefits if they voted to be represented by the Union.

(b) Threatening to leave the West Allis store, thereby implying that working conditions would worsen, if employees voted to be represented by the Union.

(c) Telling employees that they were aggressive after the employees challenged a supervisor’s claim about the effects of unionization on planned benefit increases.

(d) Threatened employees that unionization could bring negative changes to the West Allis store.

4. The Respondent violated Section 8(a)(1) of the Act on July 19 and 20, 2022, by:

(a) Soliciting employees’ grievances and promising to remedy them if they refrained from union organizational activity.

(b) Threatened loss of benefits because of the employees’ union organizational activity or future represented status.

(c) Telling employees that their union activity caused a negative environment at the West Allis store.

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

6. The Respondent has not violated the Act in any of the other manners alleged in the complaint.

REMEDY

Having found that the Respondent 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.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴⁵

ORDER

The Respondent, Starbucks Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that they will lose benefits if they choose to be represented by a union.

the Board itself, not the failure of an appellate court to enforce a Board order.

⁴⁵ 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.

⁴³ Complaint par. 9.

⁴⁴ The Respondent relies upon the 6th Circuit’s failure to enforce the Board’s *Hendrickson USA* order to argue that the supervisors’ statements are lawful. As previously noted, administrative law judges must follow Board precedent that has not been overturned by the Supreme Court or

(b) Threatening employees that working conditions will worsen if employees choose to be represented by a union.

(c) Threatening employees for making statements in support of a union.

(d) Threatening employees with negative changes to working conditions if they choose to be represented by a union.

(e) Soliciting employee grievances and promising to remedy them if employees refrain from union organizing.

(f) Telling employees that their union activity caused a negative environment in the workplace; and

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

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

(a) Post at its West Allis, Wisconsin, store copies of the attached notice marked "Appendix."⁴⁶ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed a facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, copies of the notice to all current employees and former employees employed by the Respondent at its West Allis, WI store at any time since June 23, 2022.

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

Dated, Washington, D.C., October 17, 2023

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees that they will lose benefits if they choose to be represented by a union.

WE WILL NOT threaten employees that working conditions will worsen if employees choose to be represented by a union.

WE WILL NOT threaten employees for making statements in support of a union.

WE WILL NOT threaten employees with negative changes to working conditions if they choose to be represented by a union.

WE WILL NOT solicit employee grievances and promise to remedy them if employees refrain from union organizing.

WE WILL NOT tell employees that their union activity caused a negative environment in the workplace.

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

STARBUCKS CORPORATION

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/18-CA-298181 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.



⁴⁶ If a facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting

of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."