JD–64–23
St. Louis, Missouri

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

STARBUCKS CORPORATION

and **Cases 14—CA—295813**
14—CA—295815
14—CA—296355
CHICAGO AND MIDWEST REGIONAL **14—CA—296843**
JOINT BOARD, WORKERS UNITED/SEIU **14—CA—300149**
14—CA—305307
14—RC—293357

Rochelle Ballentine **and** ***Abby Schneider, Esqs.,***
for the General Counsel.
Alice Kirkland, Noah Lipschultz, **and** ***Benjamin Marble, Esqs. (Littler Mendelson P.C.),***
for the Respondent.
Robert Cervone, David Lichtman, **and** ***Elizabeth Rowe, Esqs. (Dowd Bloch et al.),***
for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This consolidated unfair labor practice (ULP) and objections hearing was held via Zoom during January and March 2023. The complaint alleged that Starbucks Corporation (Starbucks or the Respondent) violated §8(a)(1) and (3) the National Labor Relations Act (the Act). On the record, I make the following

FINDINGS OF FACT[1]

I. JURISDICTION

Starbucks operates several cafés in St. Louis, Missouri. Annually, it derives revenue in excess of $500,000, and purchases and receives goods exceeding $50,000 directly from outside of Missouri. It, thus, engages in commerce under §2(2), (6) and (7) of the Act. The Chicago and Midwest Regional Joint Board, Workers United/SEIU (the Union) is a §2(5) labor organization.

II. UNFAIR LABOR PRACTICES

A. BACKGROUND

This case concerns Starbucks' response to the Union's organizing campaigns at these St.

[1] Unless otherwise stated, factual findings arise from joint exhibits, stipulations and undisputed evidence.

Louis cafés: 12419 St. Charles Rock Road, Bridgeton, Missouri (the Bridgeton Store); 3700 S. Kingshighway, St. Louis, Missouri (the Kingshighway Store), 922 S. Meramec Station Road A, Valley Park, Missouri (the Valley Park Store), 1500 S. Lindbergh Blvd., Ladue, Missouri (the Lindbergh Store), and 1901 Rabbit Trail Dr., Washington, Missouri (the Washington Store).

Cafés are open daily and are staffed by baristas and shift supervisors. Baristas serve as cashiers, bartenders and food preppers, cleaners and hosts. Shift supervisors perform the same duties, but, also open and close cafés (i.e., hold keys and alarm codes), access the store safe and coach baristas. Cafés are supervised by assistant store managers and store managers. Store managers report to district managers, who oversee several stores.

B. BRIDGETON STORE—VARIOUS ULP ALLEGATIONS AND ELECTION OBJECTIONS

This store was led by store manager Victoria Townson and district manager Paul Watkins. On April 1, 2022,[2] the Union petitioned to represent Bridgton's baristas and shift supervisors. (GC Exh. 1). On June 20, the Union lost the resulting mail ballot election by a 9 to 14 margin. (Id).

1. May 9 and 10: Mandatory Meetings[3]

On April 29, store manager Townson scheduled "two [paid] All Store Meetings [on] Monday, May 9th … and Tuesday, May 10th … to review the Union Voting Process and answer any questions." (GC Exh. 47). She described these meetings as voluntary.[4] The General Counsel (the GC) has alleged that Starbucks' violated the Act by calling employees into mandatory meetings to discuss unionization. An employer can, however, hold captive audience meetings to discuss unionization under current Board precedent. *Babcock & Wilcox Co*., 77 NLRB 577, 578 (1948). On this basis, this allegation is dismissed.[5]

2. May 9 and 10: Threat to Eliminate Planned Wage and Benefit Increases[6]

By way of background, before the meetings at issue, Starbucks posted a flyer in the store, which discussed its plan to implement various wage and benefit enhancements, including scheduled raises, enhanced training opportunities, increased sick leave and improved tipping via the Starbucks app. (GC Exh. 46). At the May 9 meeting, Townson made this comment regarding these planned improvements:

> The vote comes and you don't unionize, of course you get the benefits. The vote comes and you … unionize, … that has to be negotiated because the benefits as it stood when you all started the whole process, that was already on the table, now

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[2] All dates are in 2022, unless otherwise stated.

[3] This was alleged to be unlawful under complaint ¶¶5(b) and 21.

[4] She explained that employees who were absent were not disciplined, and that some workers never signed up to attend. On cross, she agreed that she never affirmatively told employees that the meetings were optional and never told anyone that they were free to leave the meetings at any time.

[5] Complaint ¶5(c) alleges that other managers unlawfully held captive audience meetings. This allegation is dismissed under the same rationale. It is noted the Complaint ¶5(a), which related to another meeting, was withdrawn.

[6] This was alleged to be unlawful under complaint ¶¶6, 7 and 21.

> this has to go and be negotiated through collective bargaining ….[7]

(GC Exh. 49B at p. 14)(transcript of recorded meeting).

At the May 10 employee meeting, Watkins made this comment about the planned benefit improvements:

> [R]ight now we … are rolling out our next investments … for partner care …. [I]f this store stays a core Starbucks store, … those benefits will be available to every partner starting August 1st. If this store's ballots come back on the 13th of June and we go towards being a Union, our current benefits that we have right now will be what this store will carry in through the collective bargaining process ….
>
> If this store goes union, then you, this store will go through a collective bargaining process, … and you will keep your current benefits through that process until … those new benefits that were bargained will then go into effect ….

(GC Exh. 50B at pp. 8–9)(transcript of recorded meeting).

A statement is an unlawful threat, when it coerces employees in the exercise of their §7 rights. 29 U.S.C. § 158(a). In gauging threats, the Board, "does not consider subjective reactions, but rather whether, under all the circumstances, a respondent's remarks reasonably tended to restrain, coerce, or interfere with employees' rights guaranteed under the Act." *Sage Dining Service,* 312 NLRB 845, 846 (1993).[8]

Townson's and Watkins' threats that the planned raises and benefit enhancements would be rescinded, if employees unionized violated §8(a)(1). A promise of a future wage or benefit increase is a condition of employment, which must be maintained during a campaign and bargaining. *Deaconess Medical Center*, 341 NLRB 589, 590 (2004). Starbucks, thus, violated the Act, when it threatened to rescind its promised wage and benefit increases. *Wal-Mart Stores, Inc.*, 352 NLRB 815 (2008); *Lynn-Edwards Corp.*, 290 NLRB 202, 205 (1988).

3. May 17: Threat of Lost Access to Management by Townson[9]

Starbucks placed a flyer in employees' tip envelopes, which described the NLRB's voting process and identified these voting choices:

> [1] "vote 'no' in favor of keeping your direct relationship with Starbucks" [or]
> [2] "vote 'yes' to give up your right to speak for yourself and have Workers United as your exclusive bargaining agent."

(GC Exh. 51).

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[7] Employee Madeline Hagan recorded the meeting, which was attended by roughly 10 workers.

[8] *Double D Construction Group,* 339 NLRB 303 (2003)("test of whether a statement is unlawful is whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction.").

[9] This was alleged to be unlawful under complaint ¶¶8 and 21.

Threats of lost access to management are generally unlawful. *L'Eggs Products, Inc.*, 236 NLRB 354, 383 (1978); *Miller Industries Towing Equipment, Inc*., 342 NLRB 1074, 1084 (2004). Starbucks' flyer ran afoul of the Act, because it falsely conveyed to employees that unionization would create a world, where management would end its "direct relationship" with employees and that the only way for employees to talk to management would be via the Union. *Id*.[10]

4. Election Objections

On June 20, the Union filed 3 objections to Starbucks' campaign conduct during the critical period preceding the mail ballot election.[11] (GC Exh. 1). Objection 1 challenged Starbucks' ability to hold captive audience meetings and mirrored complaint ¶5(b), which was dismissed under *Babcock & Wilcox Co*.; objection 1 is, thus, denied.[12] Objection 3 challenged the lost access to management threat discussed above and mirrored complaint ¶8, which was valid; objection 3 is, thus, sustained. The conduct underlying objection 3 violated §8(a)(1) by preventing employees from exercising free choice during an election. It was contained in a tip envelope flyer that was widely disseminated to all voters. The May 17 threat was also timed to coincide with the arrival of the mail ballots that the Region sent out on May 13 and was likely observed in close proximity to when several voters cast their ballots. Given that the election was decided by a close margin (i.e., by 5 only votes),[13] one would be hard-pressed to find that a widespread threat of lost access to management did not take a great, and potentially determinative, toll upon this election. On this basis, it is recommended that the election be invalidated and employees afforded the right to vote in a second untainted election. See *General Shoe Corp.,* 77 NLRB 124 (1948).

C. KINGSHIGHWAY STORE—THREAT TO LOSE BENEFITS[14]

This café was led by store manager Ember Kyle. On April 4, the Union filed an RC petition seeking to represent baristas and shift supervisors. (JT Exh. 1). The Union won the resulting election and a *Certification of Representative* issued on June 28.

In mid-May, shift supervisor Davey Masterson attended a meeting with 15 coworkers; Masterson recalled store manager Kyle making this comment:

> She … mentioned that some stores that had unionized were not guaranteed pay raises …. She had mentioned some other location that had previously unionized that was not getting the pay benefits that were coming in June …. She said that they were not guaranteed for a unionized store ….

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[10] Although an employer can tell employees that a unionized workplace is generally different, Starbucks exceeded this limitation when it threatened lost access to management. *Tri-Cast, Inc*., 274 NLRB 377, 377 (1985).

[11] *Ideal Electric Mfg. Co.*, 134 NLRB 1275 (1961) (discussing critical period).

[12] The Union later withdrew objection 2. (GC Exh. 1–ZZ).

[13] The *Tally of Ballots* reported that 9 employees voted for the Union and 14 against; this means that, if the threat solely caused 3 voters to change their decision from yes to no, it would have cost the Union the election.

[14] This was alleged to be unlawful under complaint ¶¶9 and 21.

(Tr. 413-14).[15] As noted, Starbucks had previously announced its intention to implement a series of national raises and benefit increases for employees. (GC Exh. 46).

Kyle's threat that the promised pay raises and benefit increases "were not guaranteed for a unionized store" violated the Act. As noted, a promise of a future wage increase is a condition of employment, which must be maintained during a campaign and bargaining. *Deaconess Medical Center*, supra. An employer, therefore, violates the Act, when it threatens to end the status quo regarding raises, if employees unionize. *Wal-Mart Stores, Inc.*, supra.

D. VALLEY PARK STORE—VARIOUS ULP ALLEGATIONS

This café was led by store manager Sara Beckwith, assistant store manager Briana Cronin and district manager Preston Nehum. On April 22, the Union filed a petition to represent its baristas and shift supervisors. (JT Exh. 1). The Union won the election and a *Certification of Representative* issued on July 22.

1. May: Threats on Benefits Loss and Solicitation of Grievances by Beckwith[16]

Barista Alphonse Johnson recounted being summoned into a meeting with district manager Nehum and store manager Beckwith; Johnson recalled this exchange:

> Beckwith introduced me to … Nehum … and … explained that we were going to … [talk] about the store going Union …. [S]he asked me if there were any changes I wanted to see around the store …. [T]he conversation quickly … focused on healthcare and insurance … revolving around my trans identity….
>
> She told me that Starbucks already had all the resources that I would need. And that she can get me into contact with other trans people in Starbucks. But that she didn't believe those resources would be available to me anymore if we went Union. I told her that I felt like she was making a false promise or that it sounded kind of like a bribe …. [I]t was a back and forth of her arguing with me about how she personally did not believe that going Union would be good for me in terms of whether I would have access to health insurance. She also stated that she believed that I wouldn't get any with the Union and that if I did get health insurance through a Union, it would be more expensive….

(Tr. 176–78).

Beckwith generally denied threatening employees regarding their benefits. She agreed, however, that she generally stated that everything was on the table in bargaining and there were no guarantees. She also denied soliciting grievances.

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[15] I credit Masterson, whose testimony was believable and consistent. I also note that Starbucks failed to call Kyle to rebut this testimony. See *Douglas Aircraft Co.*, 308 NLRB 1217 (1992) (failure to call a witness "who may reasonably be assumed to be favorably disposed to the party, [supports] an adverse inference … regarding any factual question on which the witness is likely to have knowledge.").

[16] This was alleged to be unlawful under complaint ¶¶12 and 21.

Inasmuch as Johnson said that Beckwith made threats and solicited grievances, while Beckwith denied such commentary, credibility must be gauged. Johnson's account has been credited. Johnson was believable, detailed and had a strong and consistent demeanor. Beckwith's denial, on the other hand, was generalized; she candidly appeared to be stretching the limits of her memory to recount specific details from the several dozen Union-related meetings held over the weeks before the election. On this basis, the credibility scale tips in favor of Johnson.

a. Threatening Loss of Benefits

Beckwith's threat that Starbucks' extant health insurance resources "would [not] be available … anymore if we went Union," warning that "going Union would [not] be good … [for] access to health insurance," and statement that Johnson "wouldn't get any [health coverage] with the Union and that if [Johnson] … did get health insurance through a Union, it would be more expensive" threatened lost benefits and violated §8(a)(1). *Wal-Mart Stores, Inc.*, supra.

b. Solicitation of Grievances

Starbucks also violated §8(a)(1), when Beckwith's asked Johnson if "there were any changes [they] … wanted to see around the store." Solicitation of grievances during a union 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.'" *Albertson's, LLC*, 359 NLRB 1341, 1341 (2013). The Board has explained that:

> Absent a previous practice … solicitation of grievances during an organizational campaign accompanied by a promise, expressed or implied, to remedy such grievances violates the Act …. [Such] solicitation … inherently constitutes an implied promise to remedy the grievances. Furthermore, the fact [that] an employer's representative does not make a commitment to specifically take corrective action does not abrogate the anticipation of improved conditions expectable for the employees involved. [T]he inference that an employer is going to remedy the same when it solicits grievances in a pre-election setting is a rebuttable one.

Maple Grove Health Care Center, 330 NLRB 775, 775 (2000). "An employer may rebut the inference of an implied promise by … establishing that it had a past practice of soliciting grievances in a like manner prior to the critical period, or by clearly establishing that the statements … were not promises." *Mandalay Bay Resort & Casino*, 355 NLRB 529, 529 (2010).

In the instant case, there is no evidence that Beckwith maintained a regular practice of independently meeting with employees and seeking their feedback about desired workplace changes. Additionally, Beckwith's solicitation was closely timed to coincide with the Union's organizing drive. The solicitation, therefore, violated §8(a)(1). *Mandalay Bay Resort & Casino*, supra.

2. April: Threat that Job Opportunities were Limited due to the Union by Cronin[17]

Barista Jamie Eiermann recalled this exchange with Cronin in early April:

> I was on my break and …. [S]he … comes up to me and …. [says] I know it's you that started the union stuff …. I didn't know Bri at this time …. So she wasn't someone that I trusted…. I said I don't know what you're talking about …. She's like it's okay, I helped my friends at my last store to unionize ….

(Tr. 453-54). Eiermann then recounted this follow-up conversation with Cronin on April 15:

> Bri came up to me …. and … said I saw your application. I know you want to transfer to the Washington store and that you also want to be a shift, but it's not happening ….
>
> [S]he said … Klarice Davis was the Store Manager for Washington at the time ….
>
> Klarice asked Sarah [Beckwith] about my application, but Sarah proceeded to say you don't want Jamie, she started their union talk so we're not doing anything with her and Brie told this to me in confidence and she said …. This is why you're not being allowed to transfer.

(Tr. 457–59).

On cross-examination, Cronin denied Eiermann's account, as reflected by this exchange:

> **Q**. … Now, in that conversation with Ms. Eiermann, did you state … your job opportunities are going to be limited if you unionize … ?
>
> **A**. I did not.
>
> **Q**. Did you ever say those words to Ms. Eiermann?
>
> **A**. No, I did not.
>
> **Q**. And the reason you never said those words to Ms. Eiermann is that it would be unlawful to say something like that, wouldn't it?
>
> **A**. Correct.
>
> **Q**. As upper management [?]
>
> **A**. Correct.

(Tr. 576–77).

[17] This was alleged to be unlawful under complaint ¶¶10 and 21.

For several reasons, I do not credit Eiermann's testimony on this point. *First*, from a demeanor standpoint, I found her to be a less than credible, and uncooperative, witness, who was eager to help on direct when it served her interests and vastly less cooperative on cross. *Second*, Eiermann's self-serving claims that Cronin, a management official whom she hardly knew at the time, just serendipitously offered to aid her organizing efforts is implausible.[18] *Third*, I find Eiermann's allegation that Cronin stated that, as a manager, she "helped my friends at my last store to unionize" equally unbelievable. *Finally*, even Cronin (i.e., a GC witness who seemed to be trying her best to help Eiermann) denied making these comments. (Tr. 576–77) (above). In sum, Eiermann's testimony has not been credited and dismissal of this allegation is recommended.

3. April: Loss of Promotion Threatened by Beckwith[19]

Eiermann, who was employed at Valley Park from January 17 to August 7, was involved in the Union's campaign. On April 22, she and 2 coworkers signed a "Dear Howard Letter," which informed Starbucks of their efforts.[20] (GC Exh. 38). Eiermann stated that, after the "Dear Howard" letter was tendered to Starbucks, she had this exchange roughly a week later with Beckwith:

> She came up to me … and … said … I want to thank you for the paragraph in the letter …. I realized she was referring to the Dear Howard letter and then she [said] … I think it's going to affect your advancement in the company ….

(Tr. 465). For the reasons discussed above, I generally do not credit Eiermann's testimony; dismissal of this allegation is also, accordingly, recommended.

4. May to June: Refusal to Hire Eiermann as Shift Supervisor[21]

On May 3 and June 10, Eiermann applied for a shift supervisor slot at Valley Park; her applications were rejected. (GC Exhs. 40-42). In response, Beckwith explained that, although barista lateness negatively impacts store operations in a general way, shift supervisor lateness is vastly more destructive because they are role models, who open and close cafés. She said that Eiermann's lack of leadership experience and ongoing attendance issues made her ill-suited for promotion. Eiermann's attendance issues were undisputed; Starbucks' records corroborated that, between January 17 and August 7, she was late a colossal ¾ of the time. (JT. Exhs. 8-9). Beckwith added that Eiermann's coworkers often complained about her lateness causing workplace issues. Beckwith credibly denied telling Eiermann that her lateness was acceptable, as long as she called in advance.[22] Valley Park ultimately promoted these baristas to shift supervisor slots in June and October:

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[18] If true, Starbucks could have disciplined or even fired Cronin, a supervisor, for this breach of loyalty. It is not feasible that Cronin would have taken this kind of risk for someone whom she hardly knew.

[19] This was alleged to be unlawful under complaint ¶¶11 and 21.

[20] This letter was also signed by employees John Sauer and Merrick Schneider.

[21] This was alleged to be unlawful under complaint ¶¶13 and 22.

[22] Eiermann's claim that Beckwith told her it was acceptable to repeatedly arrive late has not been credited; it is implausible that Beckwith would have openly endorsed this ongoing misconduct to the detriment of her store.

Name	Promotion Date
Kiersten Green	June 27
Subah Shovik	June 27
Abigail Glidden	October 17
Merrick Schnider	October 17

(JT Exhs. 15, 17). Green received a documented coaching for lateness on March 7 (JT Exh. 16), while the other employees had no discipline. (JT Exh. 17 (stipulation 13)). Beckwith explained that she promoted Green, in spite of the documented coaching, because her conduct, unlike Eiermann's, resolved itself, and she was coachable with strong leadership skills.

In *Security Walls, LLC*, 371 NLRB No. 74, slip op. at 11 (2022), the Board held that:

> Under *Wright Line*, [251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989, 102 S.Ct. 1612, 71 L. Ed. 2d 848 (1982),] the General Counsel bears the initial burden of establishing that an employee's union or other protected concerted activity was a motivating factor in the employer's adverse employment action. The General Counsel meets this burden by proving that (1) the employee engaged in Section 7 activity, (2) the employer knew of that activity, and (3) the employer had animus against the Section 7 activity, which must be proven with evidence sufficient to establish a causal relationship between the discipline and the Section 7 activity. Once the General Counsel sustains her initial burden, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected activity.

Id. (footnotes omitted). "[W]here an employer's purported reasons for taking an adverse action against an employee amount to a pretext--that is to say, they are false or not actually relied upon--the employer necessarily cannot meet its *Wright Line* rebuttal burden." *CSC Holdings, LLC*, 368 NLRB No. 106, slip op. at 3 (2019).[23] On the other hand, further analysis is required if the defense is one of "dual motivation," i.e., the employer avers that, even if an invalid reason played some part in its motivation, it would have still taken the same action for permissible reasons. *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

The GC adduced a prima facie *Wright Line* case. The GC established that Eiermann engaged in Union activity, when she drafted the "Dear Howard" letter and played a role in the campaign. The GC proved that Starbucks knew about her actions and held animus (i.e., Beckwith's threats regarding benefit losses and solicitation of grievances). On this basis, the GC proved a causal relationship between the disputed employment action (i.e., failure to promote Eiermann) and her §7 activity.

Given that the GC adduced a prima facie case, it must now be examined whether Starbucks

[23] The employer cannot meet its burden, however, merely by showing that it had a legitimate reason for its action; rather, it must show that it would have taken the same action in the absence of the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086–87 (2011). If the employer's proffered reasons are pretextual (i.e., either false or not actually relied on), it fails, by definition, to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007).

adequately showed that it would not have promoted Eiermann to a shift supervisor slot, even in the absence of her protected activity. In this regard, Starbucks has abundantly met its burden. *First*, Starbucks demonstrated that the shift supervisor position that Eiermann was seeking requires a candidate with a good attendance record (i.e., because shift supervisors open and close their stores, hold store keys, and possess store alarm codes). (R. Exh. 31). It is not unimaginable that a shift supervisor, who is regularly tardy, could cause a host of operational problems for their café, including: delayed store openings; alienating customers; staffing problems; and setting a poor example for, and frustrating, their coworkers.[24] Candidly, one would be hard-pressed to argue that a barista, who is predictably late 75% of the time, is even remotely ready to open a store as a shift supervisor. *Second*, Starbucks demonstrated that the baristas who it hired as shift supervisors did not have the same severe time and attendance problems as Eiermann. Specifically, baristas Shovik, Glidden and Schnider had not been issued any discipline at all. (JT Exh. 15-17). And, although Green had received a documented warning for lateness in March, Beckwith's testimony that Green's lateness issues had improved and was coachable was unrebutted and has been credited.[25] In sum, the hired shift supervisors appeared to be superior candidates. On this basis, Starbucks successfully demonstrated that Eiermann's ongoing lateness issues were so severe that it would not have promoted her to a shift slot even in the absence of her protected activity.

5. July 14: Eiermann's Written Warning[26]

On July 7, Eiermann was a virtual election observer for the Union. The Union won the election by an 11 to 7 margin.

Eiermann received a documented coaching for lateness on February 16, which occurred prior to her Union organizing activities. This documented coaching, which has not been alleged as unlawful, stated that:

> Jamie rejoined the company a month ago on January 17, 2022 and has worked 20 shifts. She has been late for 8 of them (1/26, 1/30, 1/31, 2/6, 2/7, 2/9, 2/11, 2/13) and called off for 3 (2/4, 2/5, 2/14). I wanted to take a minute to go over our attendance policy and how important to the team it is for a partner to be reliable at Starbucks. I also wanted to check in and see if there is anything that I can do from a scheduling standpoint to better support Jamie, so that she's able to make it to work on time, and when scheduled.

(R. Exh. 32).

On July 14, Eiermann received the written warning, which has been alleged to be unlawful; it stated that:

> In looking at Jamie's attendance sheet over the past month, the following goes

[24] Eiermann even agreed, during cross, that it is important to be on time if you're a shift supervisor because opening responsibilities could impact store operations. (Tr. 533).

[25] The GC made no effort to show that Green continued to arrive late after receiving a documented coaching or had a pattern of tardiness that anywhere was close to Eiermann's pattern.

[26] This was alleged to be unlawful under complaint ¶¶14 and 22.

> against our Attendance and Punctuality policy on page 27 of the Partner Guide, which can be found referenced below. Jamie was late the following days by the number of minutes listed, most often the reason she is late is traffic (if there is another known reason it is stated): 6/4/22 10 min, 6/12/22 18 min, 6/14/22 10 min, 6/15/22 47 min -Jamie didn't realize she was scheduled, 6/19/22 55 min - reason unknown, 6/21/22 9 min, 7/1/22 12 min. She has also been between 2-5 min late 12 times in the same time frame (6/2/22, 6/3/22, 6/5/22, 6/10/22, 6/13/22, 6/23/22, 6/24/22, 6/27 /22, 6/29/22, 7/3/22, 7/4/22, 7/5/22) Both myself and the store's ASM, Jarred Jackson, have tried numerus times to support Jamie from our end, including conversations, positive coaching, and supporting an availability change as soon as the business allowed it. The team needs Jamie to fix her reliability issue by arriving to work prior to the beginning of her shift and being ready to join the floor on time.

(GC Exh. 33). As noted, Eiermann claimed that she had an ongoing arrangement with Beckwith, where she was allegedly told that she would not be held accountable for being late as long as she gave Beckwith sufficient notice.[27] On cross-examination, Eiermann agreed that she was previously fired by a different Starbucks' store (i.e., the Delmar Loop store) in September 2020 for attendance issues. (Tr. 488). Beckwith stated that Eiermann's Union activity had no bearing on her written warning and that she was solely disciplined because she continued to repeatedly arrive late.

Starbucks maintains the following *Attendance and Punctuality* policy:

> A partner's reliability in reporting to work when scheduled and on time is essential to a store's efficient operations and in providing customers with the Starbucks Experience ….
>
> Failure to abide by this policy may result in corrective action, up to and including separation from employment. Some examples of failure to follow this policy include irregular attendance, one or more instances of failing to provide advance notice of an absence or late arrival, or one or more instances of tardiness.

(R. Exh. 40).

The written warning will now be considered under *Wright Line*. The GC adduced a prima facie *Wright Line* case. The GC showed that Eiermann engaged in Union activity, when she drafted the "Dear Howard" letter, served as an election observer and played a role in the Union's campaign. The GC proved that Starbucks had knowledge and held general animus. I find, as a result, that the GC adduced a causal relationship between the warning and §7 activity.

It must now be examined whether Starbucks demonstrated that it would not have issued Eiermann a written warning in the absence of her protected activity. In this regard, Starbucks has met its burden. *First*, as discussed, Eiermann, who was never given special dispensation to arrive late whenever she desired, was late a whopping 75% of the time and, in fact, late on the occasions cited by the written warning. In sum, Eiermann was guilty as charged, continued the proscribed behavior without limitation, and it was rational for Starbucks to discipline this conduct. If anything,

[27] As discussed above, this testimony was not credited.

a written warning was arguably lenient under these circumstances, given Eiermann's ongoing and unrelenting lateness. *Second*, Eiermann was issued a documented coaching on February 16 (i.e., a rung on the disciplinary ladder) for 8 time and attendance violations before her Union activities, and then issued a written warning on July 14 (i.e., another equal rung on the next step of the disciplinary ladder) for another 19 time and attendance violations after her Union activities. She was also fired for lateness at a different store, before there was even a hint of a Union campaign in St. Louis. This is the antithesis of disparate treatment, where an employee was disciplined in the same manner and magnitude both before and after her Union activity. Moreover, there is no record evidence that other employees repeatedly arrived late with Eiermann's frequency without being disciplined. On this basis, Starbucks has shown that Eiermann's ongoing lateness issues were so severe that a written warning was warranted, even in the absence of her protected activity.

E. WASHINGTON STORE—REFUSAL TO PROMOTE EIERMANN TO SHIFT SUPERVISOR[28]

On April 3 and June 15, Eiermann unsuccessfully applied for multiple Washington shift supervisor roles. (GC Exhs. 35–36, 43–44). Regarding these rejected applications, Eiermann agreed that Beckwith stated that she, "could not support a transfer if she could not guarantee my time and attendance even though she knew the commute would … help me out." (Tr. 478).

Starbucks maintains the following *Transfer* policy:

> A store partner may want to transfer to a different store in response to an open position or for personal reasons, such as a change in personal residence. All transfers to a different place of work are subject to district manager approval, and are contingent upon business needs, partner availability and partner performance.
>
> To be considered for transfer, a barista must have completed Barista Basics. A store manager or assistant store manager should have completed at least one year in position before transfer. Any partner requesting a transfer must be in good standing, which means the partner is adhering to company policy, is meeting the expectations of the job, and has no recent written corrective actions. Ultimately, permission for a partner transfer is at the discretion of the store manager and/or district manager ….
>
> At all times, Starbucks retains sole discretion in determining whether a partner will be transferred.

(R. Exh. 39).

Beckwith indicated that she is often asked to assess transfer applicants for a new store manager. She stated that, when a transfer involves a promotion, the employee is also interviewed. She believed that a transferee needs to have a 6 month period without corrective action in order to be eligible. Beckwith agreed that she honestly related Eiermann's poor attendance history to store manager Davis. She also denied that her Union activity played any role.

[28] This was alleged to be unlawful under complaint ¶¶20 and 22.

The failure of Starbucks to promote Eiermann to a shift supervisor slot at the new Washington store will now be considered under *Wright Line*. As a preliminary matter, the GC adduced a prima facie case under *Wright Line,* as described above.

Given that the GC adduced a prima facie case, it must now be examined whether Starbucks adequately demonstrated that it would not have promoted Eiermann even in the absence of her protected activity. In this regard, Starbucks met its burden. *First*, Starbucks' *Transfer* policy requires that "[a]ny partner requesting a transfer must be in good standing, which means the partner is adhering to company policy … and has no recent written corrective actions." In Eiermann's case, she had a documented coaching for time and attendance issues in February and a written warning for the same issues in July. These "recent" disciplinary actions would appear to render her ineligible to transfer. Additionally, there is no evidence that Starbucks' engaged in disparate treatment of Eiermann by somehow waiving its "recent written corrective action" standard for other similarly situated baristas at the Washington store. *Second*, as discussed, Eiermann was a generally poor candidate for the shift supervisor slot at Washington for all of the same valid reasons that made her a poor candidate at Valley Park, i.e., her track record of continuous lateness. It's logical that Starbucks refrained from taking a chance on her, particularly at a new store where it was striving to make a good first impression within a new community. On these bases, Starbucks has shown that Eiermann's ongoing lateness issues and connected discipline rendered her ineligible for a shift supervisor slot at Washington, even in the absence of her protected activity.

F. LINDBERGH STORE —ULP ALLEGATIONS

Lindbergh was led by assistant store manager David Brown and store manager Corinne Kinder. On March 30, the Union petitioned to represent the café's baristas and shift supervisors. (JT Exh. 1). It won the election and a *Certification of Representative* issued on June 28.

1. April 30: Threats and Disparate Enforcement of Ordering Rule by Brown[29]

Barista Jonathan Gamache testified that the Union held a "sip-in" demonstration, which involved Union supporters and off-duty employees ordering drinks with pro-Union monikers (e.g., "Union yes" or "Union strong") in order to have their pro-Union drinks called out in the store (e.g., "latte for Union strong at the bar."). Gamache recalled this reaction from assistant manager Brown:

> [A] woman … says … union strong. And then David [Brown], who was right on my left … says, Jon, you can't put that … as a name….
>
> I had never heard of this before. And … we had just had sip-in … where some of the drinks … [said] union strong on the sticker …. I told him … that's not a rule….
>
> [T]he next time, … the same thing happened. A customer … said … my name is union strong. David … tried to say that I couldn't put the name "because it was political," …. I … said it's not political …. I proceeded to … [enter] the name….
>
> I did it one more time ….

[29] This was alleged to be unlawful under complaint ¶¶15—17 and 21.

> [A]s I put the name into the computer on the register, David turned to me and said, "Jon, if you keep taking that as a name, I'm going to send you home ["]….
>
> After that, I did not.

(Tr. 339–40). After this exchange, Brown began announcing generic drink orders, e.g., café latte, venti dark roast. Gamache added that it was previously permissible for customers to provide fun fake names, e.g., Spartacus, Batman, Mickey Mouse, etc.

On the same date, Starbucks responded by posting this *Marking and Calling Customer Orders* rule on the back portion of the pastry case, which was only viewable to employees:[30]

> Marking and calling items within customer orders enables partners to personalize the Starbucks Experience ….
>
> Starbucks prohibits the writing or printing of content on items that is inappropriate, offensive or otherwise does not align with Our Missions & Values. **Partners should also not write or print content on items that advocates for a political, religious or a personal issue, even if requested by a customer.** When marking customer items and calling orders:
>
> - Do not write phrases … that do not represent Our Missions & Values ….
> - When a customer requests that you write something on an item that is inappropriate, offensive or not in alignment with Our Mission & Values, respectfully mark … the name of the … item that was ordered ….

(GC Exh. 4).[31]

In *Stericycle, Inc*., 372 NLRB No. 113 (2023), the Board recently held that challenged work rules are subject to the following standard:

> [T]he Board will begin its analysis by assessing whether the General Counsel has established that a challenged work rule has a reasonable tendency to chill employees from exercising their Section 7 rights. In doing so, the Board will interpret the rule from the perspective of the reasonable employee who is economically dependent on her employer and thus inclined to interpret an ambiguous rule to prohibit protected activity she would otherwise engage in. The reasonable employee interprets rules as a layperson, not as a lawyer. If an employee could reasonably interpret a rule to restrict or prohibit Section 7 activity, the General Counsel has satisfied her burden and demonstrated that the rule is presumptively unlawful. That is so even if the rule could also reasonably be interpreted not to restrict Section 7 rights and even if the employer did not intend

[30] Gamache indicated that he had not previously seen this rule.

[31] Brown did not dispute Gamache's testimony on these points.

> for its rule to restrict Section 7 rights ….
>
> Accordingly, if the General Counsel carries her burden of demonstrating that a rule is presumptively unlawful, an employer may rebut the presumption by proving that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule.

Id., slip op. at 8–9.

Starbucks violated §8a)(1), by implementing its *Marking and Calling Customer Orders* rule. The GC established that the rule "has a reasonable tendency to chill employees from exercising their Section 7 rights." A reasonable employee would construe this rule as broadly barring sip-ins or other in-store organizing activities, where members of the public serve as proxies for §7 activities by voicing their support for their organizing efforts. A reasonable employee would similarly find that the rule undermines their §7 activities by barring them from calling out orders supporting their §7 activities, e.g., "Union yes," "Union strong." The rule is, accordingly, presumptively unlawful under *Stericycle*, given that it "has a reasonable tendency to chill employees from exercising their Section 7 rights," as discussed above.

In advancing its defense, Starbucks failed to "prov[e] that the rule advances a legitimate and substantial business interest and that … [it] is unable to advance that interest with a more narrowly tailored rule." Its reported business interest is to bar discourse in its stores that "advocates for a political, religious or a personal issue." This fails the *Stericycle* test is two is significant ways. *First*, the rule is written in the broadest possible terms, inasmuch its key terms, "political" and "personal" expansively cover virtually anything that a given manager takes issue with.[32] Hence, Starbucks failed to create a narrowly tailored rule under *Stericycle*; it contrarily created a deeply expansive and subjective rule. *Second*, its rule fails to advance a "legitimate and substantial business interest." In reality, Starbucks does not genuinely seek to bar "political" or "personal" discourse in its cafés, *nor should it*, given that cafés are akin to public gathering places, where political and personal ideas are ordinarily exchanged. Starbucks even promotes "political" and "personal" discourse on several praiseworthy topics in its cafés (e.g., "Black Lives Matter," Pride networks, LGBTQ+ rights, disability rights, etc.) by selling t-shirts to employees on Coffeegear.com and then encouraging them to wear such shirts as part of their uniforms. These actions demonstrate that Starbucks is not genuinely interested in barring "political" or "personal" discourse, when the very same folks who serve its customers are simultaneously prompting exchanges on several exemplary "political" or "personal" themes in its cafés via its usage of employee t-shirts.[33] At best, this is inconsistent, and at worst, this is hypocrisy. It appears, as a result, that Starbucks' litmus test is not the "political" or "personal" realm, which it justifiably embraces on certain subjects. Its actual litmus test is designed to only bar "political" and "personal" topics that it disapproves of because such discourse might encourage unionization. This argument suggests that Starbucks' espoused business interest is nothing more than a smokescreen to hinder §7 activities; this fails *Stericycle*. In sum, the *Marking and Calling Customer Orders* rule is

[32] In our society, virtually everything can be labeled political or personal, depending upon the speaker or listener.

[33] Employee John Gamache indicated that Starbucks allows its own graphic t-shirts to be worn and sells them on the partner network. See, e.g., (GC Exh. 16)(disability pride tee, women's impact tee, unisex vintage tee celebrating the 50th anniversary of Starbucks, "Black Lives Matter" tee, etc.); GC Exh. 11 (pride t-shirt stating "together as one").

unlawful in substance, context and application.

2. Union T-shirt Disciplines and Firing[34]

Starbucks also unlawfully banned Lindbergh employees from wearing Union t-shirts under its *Dress Code* policy. The *Dress Code* policy provides that:

> Failure to adhere to the dress code may result in corrective action, including separation from employment ….
>
> **General Appearance, Colors and Materials**
>
> …. Clothing colors must fall within a general color palette that includes white (for tops only), black, gray, navy blue, brown or khaki (tan). Other colors are only allowed as a small accent on shoes or for accessories (ties. Scarves, socks, etc.) ….
>
> **Shirts, Sweaters and Jackets**
>
> …. Shirts may have a small manufacturer's logo, but must not have other logos, writings or graphics. The base shirt color must be within the color palette (black, gray, navy blue, brown, khaki or white). These same colors may be the base color for a subdued, muted pattern. Starbucks®-issued promotional shirts may be worn for events or when still relevant for product marketing ….
>
> Starbuckscoffeegear.corn offers reasonably priced, dress-code approved shirts for sale ….

(JT Exh. 10)

On August 15, the Lindbergh employees read aloud a letter in the café to assistant manager Brown and store manager Kinder, while wearing Union t-shirts.[35] Employees alternated reading paragraphs, which complained about understaffing and other labor relations issues. (GC Exh. 3). On August 17, Barge wore her Union t-shirt again. This prompted this assistant manager Brown to warn her that the Union shirt was barred under the *Dress Code* policy. (Tr. 26). On August 19, Barge, Moore, Gamache and Rohlf again wore their Union t-shirts to work. Store Managers Kinder and Tricia Dillon met with each of them and advised them that they were violating the *Dress Code* policy. (Tr. 29–30). On September 24, the Lindbergh employees presented a strike notice to management. The strike protested a unilateral change in work hours and an unfair labor practice charge connected to bad faith bargaining. (GC Exh. 4).[36] The strike ended at the close of the workday, with employees tendering their unconditional offer to return to work. (Id.).

On September 28, i.e., just 4 days after the strike, Starbucks issued its first round of *Dress*

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[34] This was alleged to be unlawful under complaint ¶¶18–19 and 21–22.

[35] Barge said that this was the first time that she wore a Union t-shirt to the store, but recalled previously seeing others wearing Union t-shirts in front of managers without issue. (Tr. 25-26).

[36] See also (GC Exh. 5)(video of commencement of strike); (GC Exhs. 6-7)(TikTok); (GC Exh. 8)(Twitter).

Code policy disciplines; they are summarized below:

Employee	Dress Code Violations	Disciplinary Action
Barge	August 17, 19, 30, 31 and September 5, 8, 9 (graphic t-shirt violations)	Documented Coaching
Sudekum	August 31 and September 6 (graphic t-shirt violations)	Documented Coaching
Gamache	August 19, 20, 22, 26, 27, 31 and September 1, 3, 7, 8 and 23 (graphic t-shirt violations)	Documented Coaching
Rohlf	August 19, 22, 23, 26, 27, 29, 30, 31 and September 2, 3, 5, 7 (graphic t-shirt violations)	Final Written Warning[37]

(GC Exhs. 9, 18, 22, 30; JT Exh. 11).[38]

On October 14 and 31, Starbucks issued these additional *Dress Code* disciplines:

Employee	Dress Code Violations	Disciplinary Action
Barge	September 29 and October 4, 11 (graphic t-shirt violations)	Written Warning
Sudekum	October 3 and 4 (graphic t-shirt violations), and October 15 and 20 (color palette violations)	Written Warning
Gamache	October 1, 4, 6, 7, 8, 12, 13 (graphic t-shirt violations)	Written Warning

(GC Exhs. 12, 19, 25).[39]

On October 21, Rohlf received a *Notice of Separation* on the basis of his: (1) failure to follow the *Partner Symptom Check* (PSC) policy "on multiple occasions, including 8/8/22, 9/24/22, 10/3/22, and 10/19/22, even after repeated reminders," and (2) "wearing of a graphic t-shirt out of dress code on 10/14/22, 10/15/22, 10/16/22, 10/17 /22." (GC Exh. 33). Rohlf did not debate that he wore his Union t-shirt.

Store Manager Dillon testified that Lindbergh generally failed to comply with the *Dress Code*, PSC and other workplace policies. She recollected that she started coaching employees on these issues in April.[40] She recalled that, in May, Sudekum wore a red shirt that was barred by the *Dress Code*, which resulted in an informal counseling. (R. Exh. 7). She related that her practice was that, once she discussed a *Dress Code* violation was raised and the employee continued to violate the rule, she issued discipline. She related that she coached several shift supervisors on PSC issues before issuing discipline. (R. Exh. 51). Starbucks personnel records demonstrated that,

[37] Rohlf received a final written warning on July 11 for being no call, no show on June 22 and 27. (GC Exh. 10).

[38] Barge did not deny wearing a Union t-shirt on these dates, with the exception of August 31 (i.e., she recalled wearing a Pride Network shirt on that date) under her apron. See, e.g., (GC Exh. 11). Sudekum, who also signed the "Dear Howard" letter, participated in the March on the Boss demonstration and joined the strike, also did not deny wearing his Union t-shirt on the dates at issue. Gamache testified that he saw employees wearing Union shirts during the summer months before they started receiving discipline. (Tr. 349-50). He agreed that he wore his Union t-shirt on the dates in question, but, contended that he also wore other tops that did not comply with the color palette or dress code without issue. He said that on one occasion, Kinder even complimented a sweater that was graphic in nature, which did not comply with the *Dress Code*. Rohlf, who was one of the lead Union organizers, did not dispute wearing his Union t-shirt on these dates.

[39] These employees did not dispute wearing Union t-shirts on these dates. Barge stated that, after she received this written warning, she stopped wearing her Union t-shirt to work.

[40] She served in the role as Support Manager at Lindbergh from August 2022 to January 2023.

at Lindbergh, *Dress Code* disciplines were also issued to these employees:[41]

Employee	Date	Discipline	Summary
B. Freeman	November 14	Documented Coaching	Patterned pants, graphic tee, skirt length
D. Floyd	January 3, 2023	Written warning	Lateness, no call no show, graphic tee, leggings, hooded top

(JT Exh. 11). The parties stipulated that there were no other disciplines issued for *Dress Code* violations at Lindbergh from August 1, 2021 to the present. (JT Exh. 17 (stipulation 8)).

Brown testified that he previously served as Lindbergh's assistant store manager. He recalled counseling and repeatedly coaching partners about not following the *Dress Code*. Store manager Katrina Raithel began managing Lindbergh in June, left for a maternity leave on August 13 and returned in February 2023. She confirmed that she discussed the *Dress Code* and PSC policies with partners in June before taking maternity leave.

The GC does not challenge the validity of Starbucks' *Dress Code* rule itself;[42] the GC only challenges its disparate application to Union supporters. The Board has held that, even if an employer's rule is facially lawful, the disparate enforcement of that rule against union or other protected concerted activity violates the Act. See, e.g., *Shelby Memorial Home*, 305 NLRB 910, 919 (1991), enfd. 1 F.3d 550, 565 (7th Cir. 1993)(nursing home's selective enforcement of its rule restricting pins or badges against union insignia but not other insignia was unlawful); *Stabilus, Inc*., 355 NLRB 836, 838-39 (2010)(" overbroad and targeted use of [valid dress code] … policy" to target union supporters in unlawful); *Nestle Co.*, 248 NLRB 732, 737 (1980), affd. mem. 659 F.2d 252, 212 U.S. App. D.C. 206 (D.C. Cir. 1981); *Honda of America*, 260 NLRB 725, 729 (1982) (rule against wearing union insignia disparately enforced where employer allowed employees to wear certain other items containing emblems).

Starbucks disparately enforced its *Dress Code* policy against Barge, Sudekum, Gamache and Rohlf by issuing them an array of documented coachings, written warnings, final written warnings, and in the case of Rohlf, a notice of separation. As a threshold matter, there is little debate that the GC made out of prima facie case under *Wright Line*, inasmuch as the GC demonstrated that these employees wore Union t-shirts (i.e., engaged in a core Union activity), and Starbucks disciplined them for wearing these shirts (i.e., had knowledge of their activities). There is also ample evidence of Union animus in this case in the form of multiple threats, solicitation of grievances and the implementation of the *Marking and Calling Customer Orders* rule. As a result, the GC abundantly demonstrated a causal relationship between the disciplines at issue and employees' §7 activities.

Starbucks failed to demonstrate that it would have taken the same disciplinary actions against Barge, Sudekum, Gamache and Rohlf, even in the absence of their protected activities. *First*, the record demonstrates that Starbucks did not discipline a single employee at Lindbergh for wearing a graphic t-shirt prior to issuing discipline to Gamache, Barge, Rohlf and Sudekum on September 28 for wearing their Union t-shirts, which Starbucks categorized as graphic t-shirts

[41] No evidence was presented that these employees had engaged in Union activities.

[42] See generally *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–04 (1945).

barred by the *Dress Code*.[43] Given that it is virtually certain that many employees over the course of Lindbergh's history previously wore graphic t-shirts in the presence of management prior to September 28,[44] and that if discipline for such employees actually existed, management's legal counsel would have presented these comparators, it logically follows that management previously turned a blind eye to graphic t-shirts of all varieties. It, therefore, appears that what was previously accepted (i.e., wearing graphic t-shirts as a general matter) suddenly became unacceptable, once employees began wearing Union graphic t-shirts, began organizing and went on strike. This disparate treatment, which was not designed to validly bar all graphic shirts under the *Dress Code* policy, sought to bar employees from wearing only Union t-shirts and engaging in protected activities. *Second*, there is strong and extremely close timing between Starbucks's commencement of discipline for Union adherents Gamache, Barge, Rohlf and Sudekum on September 28 and their September 24 strike. Simply put, it took Starbucks just 4 days to discipline these strikers, once they showed up at work wearing Union t-shirts; this close, almost lockstep, timing is suspect. It, as a result, can be concluded that the triggering event for management's concern about the Union t-shirts was not the shirts themselves or their graphic nature, but the strike and employees' §7 activities, which is unlawful.[45] In sum, Starbucks' decision to newly enforce a *Dress Code* policy that was never previously enforced, within 4 short days of the Union's strike, against only those employees wearing Union t-shirts smacks of invidious intent.[46]

Conclusions of Law

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

2. The Union is a labor organization within the meaning of §2(5) of the Act.

3. Starbucks violated §8(a)(1) by:

a. Threatening employees that they would lose their scheduled raises and benefit increases because of their Union and other protected activities.

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[43] The prior Sudekum discipline was for wearing a red shirt outside of the color palette, as opposed to a graphic shirt.

[44] This factual conclusion is supported by the credible testimony of store managers Raithel and Dillon (i.e., 2 of Starbucks' witnesses), who each asserted that *Dress Code* violations at Lindbergh were previously rampant.

[45] It is also noteworthy that any management decision to newly crack down on the wearing of graphic t-shirts under its pre-existing *Dress Code* rule would likely be invalid anyway, inasmuch as Starbucks' was not free to unilaterally changes its *Dress Code* enforcement practices once the Union won the election. *Wendt Corp.*, 372 NLRB No. 132, slip op. at 1 (2023)(" an employer may not defend a unilateral change … that would otherwise violate Section 8(a)(5) by citing a past practice of such changes before its employees were represented by a union and thus before the employer had a statutory duty to bargain with the union."). Although there is no complaint allegation alleging a §8(a)(5) unilateral change in the enforcement of the *Dress Code* policy, an unpled violation of a §8(a)(5) unilateral change cannot present cover to an employer that it had a legitimate, non-discriminatory basis for its actions.

[46] Although Rohlf's separation also cited PSC violations, I find that he would not have been separated in the absence of his unlawful *Dress Code* disciplines. *First*, there is no evidence that Starbucks would have fired Rohlf for his PSC violations in isolation, i.e., no Starbucks witnesses testified that he would have been independently fired for his PSC violations, even in the absence of his *Dress Code* violations. *Second*, his discharge was premised upon his unlawful final written warning for a *Dress Code* violation. Hence, if the final written warning were removed, i.e., the prerequisite for the firing at issue, it follows that his termination would not have occurred. *Third*, Starbucks presented no evidence that any employees have ever been fired for PSC violations in isolation.

b. Threatening employees that they would lose access to management because of their Union and other protected activities.

c. Soliciting grievances from employees and making implied promises to remedy their grievances in order to undermine their Union support.

d. Implementing, maintaining and threatening to discipline employees under its *Marking and Calling Customer Orders* rule.

4. Starbucks violated §8(a)(3) by:

a. Issuing Alexandria Barge a documented coaching and written warning because of her Union and other protected activities.

b. Issuing Jonathan Gamache a documented coaching and written warning because of his Union and other protected activities.

c. Issuing Nicholas Sudekum a documented coaching and written warning because of his Union and other protected activities.

d. Issuing Bradley Rohlf a final written warning and then firing him because of his Union and other protected activities.

5. These unfair labor practices affect commerce within the meaning of §2(6) and (7).

6. Starbucks has not otherwise violated the Act.

7. By the conduct cited by the Union in objections 3, Starbucks has undermined the holding of a fair election, and such conduct warrants setting aside the election held in Case 14-RC-293357.

Remedy

The appropriate remedy for the violations found herein is an order requiring Starbucks to cease and desist from their unlawful conduct and to take certain affirmative action.

Starbucks, having unlawfully discharged Rohlf, shall reinstate him to his former job or, if this position no longer exist, to a substantially equivalent position, without prejudice to his seniority or any other rights or privilege previously enjoyed. Starbucks shall make him whole for any loss of earnings and other benefits, and all other direct or foreseeable pecuniary harms, suffered as a result of its unlawful discrimination against him. *Thryv, Inc*., 372 NLRB No. 22 (2022). This make whole remedy shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB 1152 (2016), enfd. in relevant part 859 F.3d 23, 429 U.S. App. D.C. 270 (D.C. Cir. 2017), Starbucks shall also compensate him for search-for-

work and interim employment expenses regardless of whether those expenses exceed his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), Starbucks shall also compensate him for the adverse tax consequences, if any, of receiving lump sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), Starbucks shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 14 a report allocating backpay to the appropriate calendar year for Rohlf. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. Starbucks shall also be required to remove from its files any references to: the unlawful firing of Rohlf and his unlawful final written warning; and the unlawful documented coachings and written warnings issued to Barge, Gamache and Sudekum. It shall also notify them in writing that these disciplines and discharges have been removed and that these unlawful personnel actions will not be used against them in any way.

Regarding the GC's notice reading request, the Board generally grants such a remedy, where the ULPs are so pervasive and egregious that a notice reading is necessary to dispel the impact of such conduct.[47] In this case, a notice reading is fully warranted. Starbucks' serious and widespread ULPs, which were designed to unlawfully derail the Union's protected organizing campaign, warrant having the attached notice to employees read aloud during worktime. A public reading of the notice to employees is a remedial measure that ensures that they "will fully perceive that the Respondent and its managers are bound by the requirements of the Act." See *Federated Logistics & Operations*, 340 NLRB 255, 258 (2003), affd. 400 F.3d 920, 929–30, 365 U.S. App. D.C. 164 (D.C. Cir. 2005). A public notice reading will also help "dissipate as much as possible any lingering effects" of the ULPs at issue herein. *Homer D. Bronson Co*., 349 NLRB 512, 515 (2007), enfd. mem. 273 Fed. Appx. 32 (2d Cir. 2008). Starbucks, as a result, must hold a meeting or meetings during work time at its Bridgeton, Kings Highway, Valley Park, and Lindbergh stores, scheduled to ensure the widest possible attendance of employees, at which time the remedial notice is to be read to employees by a District Manager or higher level management official in the presence of a Board agent and a Union representative if the Region or the Union so desires, or, at Starbucks' option, by a Board agent in the presence of a District Manager or higher level management official, and, if the Union so desires, a Union representative.

Starbucks shall also rescind its *Marking and Calling Customer Orders* rule and notify all employees at the Lindbergh store and the Union that this has been done. Starbucks shall post the attached notice in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010).[48] Finally, given the egregiousness of Starbucks' ULPs, a broad order requiring it to cease and desist "in any other manner" from interfering with, restraining, or coercing its employees in the exercise of their §Section 7 rights is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979).

[47] *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007); *Domsey Trading Co*., 310 NLRB 777, 779–80 (1993).

[48] During this 60-day posting period, Starbucks shall permit a duly appointed Board agent to enter its facilities at reasonable times and in a manner not to unduly interfere with its operations, for the limited purpose of determining whether it is in compliance with the notice posting, distribution, and mailing requirements.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[49]

ORDER

A. Starbucks Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Threatening employees that they would lose their scheduled raises and benefit increases because of their Union and other protected activities.

b. Threatening employees that they would lose access to management because of their Union and other protected activities.

c. Soliciting grievances from employees and making implied promises to remedy their grievances in order to undermine their Union support.

d. Implementing, maintaining and threatening to discipline employees under its *Marking and Calling Customer Orders* rule.

e. Disparately enforcing its *Dress Code* policy against employees wearing Union t-shirts or engaging in other Union and other protected activities.

f. Disciplining, firing or otherwise discriminating against employees because of their Union and other protected activities.

g. In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by §7 of the Act.

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

a. Within 14 days from the date of the Board's Order, offer full reinstatement to Bradley Rohlf to his former job or, if this job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

b. Make Rohlf whole for any loss of earnings and other benefits, and all other direct or foreseeable pecuniary harms, suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

c. Compensate Rohlf for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating

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

the backpay award to the appropriate calendar years.

d. File with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Rohlf's corresponding W-2 form reflecting the backpay award.

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

f. Within 14 days from the date of the Board's Order, remove from its files any reference to these unlawful discharge and disciplines of Rohlf, Barge, Gamache and Sudekum, and within 3 days thereafter, notify them in writing that this has been done and that the discharges and disciplines will not be used against them in any way.

g. Rescind the *Marking and Calling Customer Orders* rule at the Lindbergh store and notify employees and the Union that the rule has been rescinded.

h. Within 14 days after service by the Region, post at its Bridgeton, Kings Highway, Valley Park, and Lindbergh stores in St. Louis, Missouri the attached notice marked "Appendix."[50] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Starbucks' authorized representative, shall be posted by Starbucks and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 30, 2022.

i. During this 60-day posting period, Respondent shall permit a duly appointed Board agent to enter its facilities at reasonable times and in a manner not to unduly interfere with its operations, for the limited purpose of determining whether it is in compliance with the notice posting, distribution, and mailing requirements.

j. Hold a meeting or meetings during worktime at its Bridgeton, Kings Highway, Valley Park, and Lindbergh stores in St. Louis, Missouri, scheduled to ensure the widest possible attendance of employees, at which the attached notice marked "Appendix" will be read

[50] 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."

to employees by a District Manager from the St. Louis area in the presence of a Board Agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of the District Manager and, if the Union so desires, the presence of an agent of the Union.

k. Within 21 days after service by the Region, file with the Regional Director for Region 14 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 not specifically found, and that the Regional Director shall, in Case 14-RC-293357, set aside that election result and hold a new election at a date and time to be determined by the Region.

Dated Washington, D.C. September 21, 2023

Robert A. Ringler
Administrative Law Judge

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 that you will lose your scheduled raises and benefit increases because of your Union and other protected activities.

WE WILL NOT threaten that you will lose access to management because of your Union and other protected activities.

WE WILL NOT solicit your grievances and make implied promises to remedy your grievances in order to undermine your Union support.

WE WILL NOT implement, maintain and threaten to discipline you under, a *Marking and Calling Customer Orders* rule.

WE WILL NOT disparately enforce our *Dress Code* policy against employees wearing Union t-shirts or engaging in other Union and other protected activities.

WE WILL NOT discipline, fire or otherwise discriminating against you because of your Union and other protected activities.

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

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

WE WILL make Rohlf whole for any loss of earnings and benefits, and all other direct or foreseeable pecuniary harms, resulting from his discipline and discharge, less any net interim earnings, plus interest, and **WE WILL** also make him whole for reasonable search-for-work and

interim employment expenses, plus interest.

WE WILL compensate Rohlf for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WLL** file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Rohlf's corresponding W-2 form reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to these unlawful disciplines and discharges of Rohlf, Alexandria Barge, Jonathan Gamache and Nicholas Sudekum, and **WE WILL**, within 3 days thereafter, notify them in writing that this has been done and that their disciplines and discharges will not be used against them in any way.

WE WILL rescind the *Marking and Calling Customer Orders* rule at the Lindbergh store and notify employees and the Union that the rule has been rescinded.

WE WILL hold meetings during working hours at our Bridgeton, Kings Highway, Valley Park, and Lindbergh cafés in St. Louis, Missouri, and have this notice read to you and your fellow workers by your District Manager or an equally high-ranking responsible management official in the presence of a Board agent and, if the Union so desires, a Union representative, or, at the Respondent's option, by a Board agent in the presence of your District Manager or an equally high-ranking management official, and, if the Union so desires, a Union representative.

STARBUCKS CORP.
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1222 Spruce Street, Room 8.302, St. Louis, MO 63103-2829
(314)539-7770, Hours 8 a.m. – 4:30 p.m. CT

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/14-CA-295813 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (314) 449-7493.