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

STARBUCKS CORPORATION

and

Cases 14-CA-290968
14-CA-291278
14-CA-291665
14-CA-291958
14-CA-292529
14-CA-293122
14-CA-293404
14-CA-295106
14-CA-295350

CHICAGO AND MIDWEST REGIONAL
JOINT BOARD, WORKERS UNITED, SEIU

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for the General Counsel.
Kimberly Doud, Elizabeth B. Carter, Jedd Mendelson, and Jonathan O. Levine, Esqs.(Littler Mendelson, P.C. Orlando, Florida, Newark, New Jersey and Milwaukee, Wisconsin)
for the Respondent.
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for the Charging Party.

DECISION

STATEMENT OF THE CASE

Findings of Fact

Arthur J. Amchan, Administrative Law Judge. This case was tried via Zoom technology from July 5 through July 18, 2022. The first charge in this matter, 14-CA-290968, was filed by the Union on February 22, 2022. The charge in 14-CA-295350 was filed on June 1, 2022. The others in this matter were filed between those dates. The General Counsel issued a third consolidated complaint on June 21, 2022, encompassing all the charges listed above.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent,[2] I make the following findings of fact.

I. JURISDICTION

Respondent is a nationwide corporation, which sells food and beverages, most notably coffee. This case involves 3 of its stores, one in Overland Park, Kansas, another in Lawrence Kansas and a third in Kansas City, Missouri. Respondent annually derives revenue in excess of $500,000 from each of these 3 stores. It also annually purchases and receives at each of these stores goods valued in excess of $50,000 directly from points outside of Kansas and Missouri. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Chicago and Midwest Regional Joint Board, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

As stated above, this case involves 3 of Respondent's stores in the Kansas City area, one at 75th street in Overland Park, Kansas (Starbucks store # 20346), a second, store number 29089 in Lawrence, Kansas[3] and a third store # 2326 in Kansas City, MO (Country Club Plaza, 302 Nichols Road).[4] Most of the case concerns the store on 75th Street in Overland Park, Kansas.[5] The 75th Street store is unusual for a Starbucks in that there is no in-store service and no customer seating, only a walk-up window and a drive-thru window. The store consists of 2 shipping containers put together in the shape of a T. Space inside the store is very limited. During the period relevant to this case approximately 18-20 employees (or partners as Starbucks calls them) worked at the 75th street store. In comparison, about 30 worked at the Kansas City, MO (Country Club Plaza) store. At the 75th Street store between 4 and 8 employees were on duty on each shift.

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[1] At several places in the transcript, statements by the court reporter are attributed to this judge; Tr. 502, line 9; Tr. 526, line 23.

[2] The General Counsel's post-trial brief is 105 pages. Respondent's post-trial brief is 218 pages. The Charging Party filed a brief or statement relying upon the General Counsel's brief.

Much of the evidence in this record, particularly with regard to the alleged Section8(a)(1) allegations is cumulative. I decline to address all these allegations because they would not result in additional remedies. Finally, I regard Respondent's alleged solicitation of grievances and alleged illegal grant of benefits to be de minimis in the context of this case.

I also will not address those allegations for which the General Counsel is challenging existing Board precedent, i.e., captive audience meetings, the *Joy Silk* doctrine regarding recognition absent an election, etc., since I am bound by current Board law. I have, however, set out the facts relevant to those issues.

[3] There is more than one Starbucks in Lawrence. The store involved in this case is store 29089 located at 1731 West 23rd Street.

[4] On or about August 22, 2022, after this hearing closed, Respondent closed its Country Club Plaza, Kansas City, MO store, https://fox4kc.com/business/starbucks-location-on-country-club-plaza-closes-permanently.

[5] The store is located just off of Interstate 35.

In mid-January 2022, a week before the first alleged unfair labor practice in this case, ML, who had been the store manager at 75th street since November 2020 went on a leave of absence, from which she did not return. Prior to this, ML had been subject to a performance improvement plan (PIP). ML was replaced by Amanda Pittman for about a week and then by Drake Bellis, as interim manager. Starbucks hired Jen Seymour to be a store manager in late January and in early February designated her to become the store manager at 75th street. She started training with Drake Bellis in early February at 75th street and became the store manager on March 7, 2022.

The store managers at 75th street reported to District Manager Sara Jenkins from July 2019 until May 2, 2022. On January 31, 2022, an employee organizing committee emailed a letter to Starbucks CEO Kevin Johnson, G.C. Exh. 5. The letter had the printed names of 10 employees on it. The letter complained of staffing shortages, the cramped space inside the store and inadequate parking. As to parking, the letter stated, "We **refuse** the options presented by our District Manager, Sara J., to park two blocks away from our store or walk across five lanes of busy traffic, putting our safety at risk." Jenkins received the letter on Monday, January 31, and was upset by it, particularly since it mentioned her by name, Tr. 1261.[6] The Union filed a petition with the NLRB to represent the baristas and shift managers at the 75th street store on February 2, 2022. 17 employees had signed cards authorizing the Union to represent them.

A petition signed by 16 of the 18-20 employees at the 75th street store was emailed to Respondent on March 7, 2022 demanding recognition of the Union. On or about March 19, 2022, Respondent became aware of a letter signed by 15 of these employees announcing their intention to strike, in part due to Starbucks refusal to recognize the Union.

A mail ballot election was conducted at the 75th Street store between March 16 and April 6, 2022. The ballots were counted on April 8. 6 employees voted for union representation, 1 voted against. Between March 28 and April 5, Respondent terminated 3 actively pro-union employees. Alydia Claypool, Michael Vestigo and Maddie Doran. Objections to the conduct of the election are pending in NLRB Region 29.[7]

In May 2022, Starbucks realigned its districts in the Kansas City area and Ms. Jenkins is no longer responsible for 75th Street. At about the same time Respondent reinstated Alydia Claypool with backpay and a restoration of her benefits.

[6] I have no opinion as to the validity of the complaints made about Sara Jenkins.
[7] Docket No. 14-RC-289926.

Alleged unfair labor practices and facts pertaining to those allegations at the 75th Street store

Alleged Unfair Labor Practices committed in whole or in part by interim store manager Drake Bellis

Respondent hired Drake Bellis in July 2018 as a store manager. From February to November 2020, he was the manager of the 75th street store.[8] Then he moved to a Starbucks in Olathe, Kansas. In January 2022, he began training Jen Seymour, who Starbucks had just hired to be a store manager. On about February 1, 2022, Bellis became the interim store manager at 75th street and began training Seymour to become the permanent store manager. At the same time, Bellis continued as store manager in Olathe and had other duties as well,

Bellis remained the interim manager at 75th street until March 7, 2022. Seymour then became the store manager. Many of the facts upon which the following allegations are based are not in serious dispute.

Upon becoming interim store manager at 75th street, Bellis began scheduling Partner Development Conversations (PDC) with the employees at the store. Employees were to sign up for their PDC and the vast majority did so. In these PDCs, Bellis brought up the union campaign, Tr. 1430-31. In fact, it was on an agenda he prepared before the meetings.

At a shift meeting on February 14, 2022, Drake Bellis told about 6 employees the company dress code was not being followed and that it would be enforced going forward, Tr. 70-71.[9] Several employees testified that the dress code was not enforced prior to February 14.[10] I credit this testimony because there is no evidence to the contrary. Bellis told employee Calvin Culley to remove excess buttons from his Starbucks apron.

On February 15, 2002, District Manager Sara Jenkins told Hannah McCown that she could not wear white mesh sneakers at work. When M. L. had been store manager, McCown had worn these shoes to work quite often. No manager told McCown she could not do so until February 15, Tr. 71-72. Employees regularly violated Respondent's dress code in a number of respects, without reproach, prior to February 15.

[8] Bellis worked from home from March to May 2020 due to the COVID pandemic.

[9] Bellis did not contradict McCown's testimony as to what he said about the dress code on February 14. His testimony at Tr. 1449 implicitly confirms it. Bellis would not have needed to discuss the dress code in such detail if it was already being enforced adequately.

[10] Calvin Culley's testimony at Tr. 896 that ML told him not to wear certain items or she would get mad does not negate the testimony that the dress code was not strictly enforced by the threat of discipline and imposition of discipline prior to February 14. Drake Bellis testified that he discussed enforcement of the dress code with shift supervisors on February 14, Tr. 1449. He did not contradict McCown's testimony at Tr. 70-71 that Bellis told the shift supervisors that the dress code had not been enforced recently and that the shift supervisors needed to work toward the dress code every day, which I understand to be a directive that the shift supervisors strictly enforce it.

Employees at 75th street had complained about the lack of employee parking and the inadequacy of storage at least since 2021. In mid-February 2022, Respondent repainted the stripes and installed a storage pod in the parking lot.

At a PDC (Partner Development Conversation) with Hannah McCown, Bellis asked her what the Union was promising her. He then told her that a union's negotiations with Kroger took 400 days and did not work out well for the employees.

Starbucks' October 2021 promise of wage increases to all Starbucks employees

The October 27, 2021 edition of a company publication, "Partner Hub" contained a letter to all U.S. partners from Rossann Williams, Starbucks Executive Vice President, and President North America, G.C. Exh. 6. The letter stated that investments the company will be making will enhance wages, training and in-store experiences nationwide. It continued to state that investment would include "Unprecedent Investments in Wages."

The letter went on to state that Starbucks would ensure that all partners earn at least $15/hour by Summer 2022. Effective in late January 2022, partners with two or more years of service could receive up to a 5% raise and partners with five or more years could receive up to a 10% raise. The letter stated, additionally, that by Summer 2022, average pay for all U.S. hourly partners will be nearly $17/hr. In December 2020, Starbucks committed to raising its wage floor to $15/hr.[11] Further, the letter stated that barista hourly rates will range based on market and tenure from $15 to $23/hr. across the country in Summer 2022. The "Partner Hub" edition containing the October 27, 2021 letter, was posted at the 75th street store no later than February 14, 2022, Jt. Exh. 2, G.C. Exh. 6, Tr. 62-65.

Comments by Bellis and Jenkins about the anticipated wage increases

At various times during February and March, 2022, Bellis told employees that he did not know whether or not they would get wage increases, previously promised, if they selected the Union because Respondent was required to maintain the status quo, Tr. 1442-43. He also told employees that he would have a hard time hiring new employees at 75th street if their wage rates were less than those at the non-union Starbucks. One of the occasions that Bellis communicated this to employees was a shift meeting on February 14, 2022, attended by 5 or 6 employees, Tr. 64-67.

On February 14, Hannah McCown asked District Manager Sara Jenkins if the raises mentioned in Partner Hub would be part of the status quo. Jenkins said they would not be, Tr. 77-79.[12]

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[11] Despite this commitment, District Manager Sara Jenkins told employee (partner) Hannah McCown that upon being demoted from shift supervisor to barista, McCown would be earning $12/hr. rather than $15.24/hr.,, her wage rate as a shift supervisor.

[12] Jenkins did not contradict McCown's testimony on this point. She responded in the negative to counsel's leading question, "Have you ever told partners they wouldn't be getting the previously announced wage increases? Tr. 1287-1288. However, she also testified that she told employees "everything is on the table," on March 3. Jenkins' testimony might be more credible if Respondent's

On February 23, 2022, employee Hope Gregg called Drake Bellis and recorded their conversation, Tr. 506-07. At one point Gregg asked Bellis whether employees would receive raises if they selected the Union. Bellis answered, "it's all on the table, so it's not a yes or a no, G.C. Exh. 50, p. 1. He told Gregg that employees at another Starbucks store could only work at unionized stores and whether that would be true in the case of 75th St. would depend on the terms of a collective bargaining agreement.

Bellis continued to tell Gregg that he had read the collective bargaining agreement pertaining to a store in Canada and suggested employees had obtained very little, if anything from organizing. He stated that the status quo remains in place during collective bargaining and that the negotiating process is, on average, about 400 days, but could be 6 months or 2 years. During this period, Bellis stated, "your benefits and pay stays in status quo."

Gregg then asked what that meant for employees' current raise, "in what is it, June?"

Bellis replied,

> Yeah. So that one, actually, we've asked—we've asked about that, and the answer that I'm getting is that that's also up in the air. …I actually don't know the answer to that. So it could be yes. I hope it's yes, but it could also be no and people with much higher pay grades than me determine that stuff, including the union side.
>
> G.C. Exh. 50, pp. 8-9.[13]

Gregg then asked if employees voted for unionization could it [which I assume means raises] be taken away.

Bellis replied, :That's what I was told…I wouldn't necessarily call it being taken away. It just would never come….if let's say in August there's more raises or whatever, then you all would not get that.

So as far as the summer raises coming up, that one…is up in the air.

Bellis also talked about how difficult it would be to hire new employees if wage rates at 75th Street were less than at other Starbucks stores. He asked rhetorically, "why would anybody want to come work at a store making $3 less," G.C. 50, p. 11. He made similar statements to other employees, Tr. 1476.

He also said he did not know if employees would be able to transfer to other stores if 75th street was unionized. Bellis said further that at that time, he could not approve a transfer because the 75th street store was understaffed. Bellis' answers to Gregg's inquiries suggested that in the

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counsel did not lead her but instead asked what she said to McCown and what McCown said to her.

[13] The transcript of this conversation is in the record twice, as Jt. Exh. -5 and G.C. Exh. 50

future the ability to transfer to another Starbucks would depend on whether or not employees selected the Union, G.C. 50, pp. 11-12.

Bellis went on to tell Gregg that managers typically cannot assist employees in doing their jobs in an unionized place of employment, G.C. Exh. 50, 13-14. However, he continued, "like when I was working on the floor with you all Saturday…that wouldn't be in the cards….that's probably something like Jen or myself …couldn't do that anymore." I find these statements to be more than a truthful statement of fact, they are speculative predictions.

Comments by District Manager Ellie Grose about promised wage increases at Country Club Plaza

On February 23, 2022, Country Club Plaza shift supervisor Adeline Wright met with her district manager Ellie Grose about her safety concerns. A few nights earlier, Wright had been confronted by a threatening drunk person. Grose told Wright that Starbucks had renewed its contract for security protection. Then Wright complained about the adequacy of employee compensation, particularly in view of the security issues at Country Club Plaza.

At this point, Grose asked Wright if she was aware of Starbucks' billion dollar investment to be implemented in the summer of 2022. Wright asked if Grose was talking about the $15 per hour wage. Wright responded that some employees thought that inadequate.

Grose then told Wright that she was aware of the union representation petition and that after June employee benefits would freeze.[14]

Analysis and Conclusions regarding promised wage increase

Respondent violated Section 8(a)((1) in telling employees that they would not or might not get the wage increases promised in October 2021 if they selected union representation

As stated earlier, on October 27, 2021, Respondent in a company publication, *Partner Hub,* promised all U.S. employees substantial wage increases in mid-late 2022. This publication was posted at the 75th street store no later than February 14, 2022. A promise of a future wage increase is a condition of employment and is part of the status quo that an employer must maintain during an organizing campaign and in collective bargaining negotiations with a union, *Baker Brush Co.,* 233 NLRB 561 (1977); *Liberty Telephone & Communications, Inc.,* 204 NLRB 317 (1973); *More Truck Lines,* 336 NLRB 772 (2001) enfd. 324 F. 3d 735 (D.C. Cir. 2003). *Deaconess Medical Center,* 341 NLRB 589, 590 (2004). Starbucks violated Section 8(a)(1) in telling the employees of the 75th street and Country Club Plaza stores that they would

[14] Grose testified that she told Wright that wages could go up, down or stay the same as a result of collective bargaining. She denied mentioning Starbucks billion dollar investment-so far as she could recall, Tr. 1376. She also denied discussing "the October wage increase." Grose did not specifically deny telling Wright that after June employee wages and benefits would freeze. Wright's testimony in this regard is uncontroverted and therefore credited. Assuming Grose's testimony contradicts Wright, I credit Wright. At the time of this hearing Wright was a Starbucks employee. Thus, her testimony is particularly reliable given that she was testifying against her pecuniary interests. *Gold Standard Enterprises,* 234 NLRB 618, 619 (1978); *Flexsteel Industries,* 316 NLRB 745 (1995).

not or might not get the wage increase promised in Partner Hub in October 2021 if they selected union representation.

The record establishes and Drake Bellis testified, that during February and March, 2022, after the representation petition was filed, he told employees that he did not know whether or not they would get wage increases, previously promised, if they selected the Union because Respondent was required to maintain the status quo, Tr. 1442-43. He also told employees that he would have a hard time hiring new employees at 75th street if their wage rates were less than those at the non-union Starbucks.

The record also shows that Sara Jenkins on at least one occasion told an employee that the promised increases were not part of the status quo. District Manager Ellie Grose said something similar to an employee at Country Club Plaza.

Respondent's brief at pages 118-121 defends itself on the basis of Bellis' uncertainty as to whether wage increases previously announced were part of the status quo. However, neither Bellis nor Jenkins, so far as this record shows, made any attempt to determine whether or not Respondent was obligated to give 75th street employees the increases promised to all Starbucks employees in October 2021. They were content to leave employees with the impression that they might not get the increases that non-union employees would receive in 2022. Indeed, Bellis reinforced this message by telling employees that it might be difficult to hire for 75th street if employees there were being paid less than at other Starbucks.

Respondent's brief does not address statements made by Sara Jenkins at 75th street and Ellie Grose at County Club Plaza which also had the effect of leaving employees with uncertainty as to whether selecting union representation would result in them not getting the wage increases that non-union Starbucks employees would receive. These are very significant Section 8(a)(1) violations that were likely to be very coercive to employees in deciding whether or not to select union representation.

Respondent's statements that it would be difficult to hire for the 75th street store violated Section 8(a)(1). Similarly, statements that transfers to other Starbucks would not be allowed violated the Act.

Given employees' stated concerns about understaffing at the 75th street store, Respondent's statements that it would be difficult to hire employees for that store, thus exacerbating these concerns would be likely to coerce employees as to whether or not to vote for union representation. Similarly, the statements that employees would not be allowed to transfer to other stores was coercive. For one thing, these statements were predicated on the illegal statement indicating that if employees selected unionization, they would not or might not receive the raises otherwise promised to all Starbucks employees in October 2021. One such statement is Bellis' rhetorical question, , "why would anybody want to come work at a store making $3 less." Secondly, such statements were likely to leave employees with the impression that if they selected union representation, working conditions would deteriorate and they would be stuck at 75th street, earning considerably less than employees at non-union Starbucks stores.

Respondent by Ellie Grose violated Section 8(a)(1) at the Country Club Plaza store by telling Adeline Wright that wages would be frozen

Whether a statement that wages will be frozen violates the Act depends on the context. Here Adeline Wright was inquiring about the previously promised wage increases. District Manager Grose's response was that after June employee benefits would freeze. This was reasonably likely to be interpreted to mean that if employees at Country Club Plaza selected union representation, they would not receive the increases promised to all Starbucks employees in October 2021. Thus, Grose's statement violates Section 8(a)(1), *Jensen Enterprises, Inc.,* 339 NLRB 877 (2003).

Drake Bellis violated Section 8(a)(1) by telling employees that if they selected union representation he could no longer help them in their work tasks.

Drake Bellis, as a store manager, helped out with barista and shift supervisor tasks, Tr. 1421. In a phone conversation on February 23, 2022, Bellis told Hannah Gregg that "typically store managers can't work with you on the floor…that's probably something like Jen or myself couldn't do anymore." This constituted a prediction not based on objective fact, such as the bargaining history of this union. It was intended and would reasonably have the effect of discouraging employees from selecting unionization.

Further statement of Facts

Alleged Unfair Labor Practices committed by Respondent in whole or in part by District Manager Sara Jenkins

On Saturday, January 29, 2022, District Manager Jenkins arrived at the 75th St. store. Her presence on a Saturday morning was unusual. Jenkins asked employees what improvements could be made at the store. Amanda Pitman had informed Jenkins about the organizing drive the night before, Tr. 1260.

On February 1-2, 2022, there was a significant snowfall in the Kansas City area.[15] Hannah Edwards opened the 75th street store as scheduled at 5:00 a.m. on Wednesday, February 2. At about 7:00 a.m., District Manager Jenkins arrived at the store. Jenkins coached Edwards for not being pleasant to her that day and the previous Saturday. Jenkins and Edwards discussed the parking and storage issues at the store. According to Edwards, in the course of the conversation, Jenkins stated that the Union was "the elephant in the room."[16]

[15] The Transcript at page 282 indicates these events occurred on February 22, 2022. However, at Tr. 283, it states they occurred on February 2, a Wednesday, the day the representation petition was filed and shortly after Sara Jenkins became aware of the employees letter to Kevin Johnson. Wednesday February 2, 2022 is the correct date. February 22 was a Tuesday and the Kansas City area experienced a major snowfall on February 1-2 and did not experience a similar snowfall on February 21 (President's Day) - February 22. https://www.kshb.com/news/local-news/live-updates-winter-storm-moves-through-kansas-city-wednesday. https://world-weather.info/forecast/usa/kansas_city/february-2022/

[16] Other employees testified that Drake Bellis used this term when conducting their Partner Development Conversation (PDC), e.g. Tr. 886. Bellis testified that when conducting the PDCs, he did not want the Union "to be the elephant in the room," Tr/ 1430-31.

Edwards testified that Jenkins told her that Edwards (or the employees in general) had stabbed her in the back. Jenkins denies this but testified that she told Edwards that, "it feels personal when you put my name in the letter," Tr. 1263. Regardless of which is correct, it is clear that Sara Jenkins was personally offended by the Kevin Johnson letter.

March 3, 2022 meeting.

On March 3, 2022, Respondent held a meeting for employees at a Marriott hotel. There is conflicting evidence as to whether or not it was mandatory. Most, but not all, employees attended. Those that did not attend were not disciplined.

At this meeting, Drake Bellis read from a script. He started by telling employees not to record the meeting. Later, he told employees that given the high turnover at 75th street, the employees working at 75th street might be working with a whole new group of people in a year, TR. 1439, G.C. Exh 51, pp. 38-39. Bellis also told employees that, "Bloomberg law estimates the first contract takes, on average, 409 days," Exh. 29, p. 10; [17] He also told employees he would not be able to transfer them to a non-union store without negotiating with the Union.

At one point employee Lisa Debey and Jenkins argued about whether employees would have to ratify a collective bargaining agreement reached between Starbucks and the Union. Sara Jenkins ended the meeting when it became acrimonious after about 20 minutes, Tr. 1280. Hannah McCown tried unsuccessfully to hand Sara Jenkins and Drake Bellis a petition claiming that the Union represented a majority of unit employees. The petition was signed by 16 of the 18-20 employees working at the 75th street store at the time, G.C. Exh. 8.

Afterwards, a number of employees congregated inside the entrance to the hotel, They were joined by several supporters from the Plaza store and union organizer Mari Orrego. Several had picket signs, but were not picketing. Marriott's hotel manager, Marcia Hall, told the employees they had to go outside the hotel. Then she informed Sara Jenkins of the employees' presence because Jenkins had previously asked her to do so. Jenkins went outside to where the employees had congregated. She then returned to the hotel and asked Hall to call the police. Hall did so, then told the employees that she had called the police. The employees then left. Hall then called the police and told them it was unnecessary to send any police to the hotel.[18]

McCown emailed the petition claiming majority status to Drake Bellis on March 7, with a courtesy copy to Sara Jenkins, G.C. Exh. 9.

District Manager Sara Jenkins was aware that Hannah Edwards had recorded the March 3 meeting at the Marriott hotel. On March 11, Jenkins insisted that Edwards sign the employee handbook section that prohibits employees from recording in a Starbucks store.

[17] The hearing transcript indicates that at the March 3 meeting, Bellis said he did not know if employees selected the Union whether they would get the wage increases non-union employees would get,. However, the recording of the March 3 meeting indicates he did not discuss the promised wage increases at all, G.C. Exh. 51.

[18] To the extent there is a conflict between the testimony of Hall and Jenkins, I credit Hall. Unlike Jenkins, she has no stake in the outcome of this litigation.

Hannah McCown's availability for work and a conversation between McCown and Sara Jenkins on about February 14.

Hannah McCown began working at the 75th street store on November 4, 2021. She had worked for Starbucks before that at different stores. In a conversation on about February 14, Jenkins told McCown that her availability was insufficient for Starbucks. Jenkins also told McCown she could no longer start work at 8:00 a.m. McCown explained that she had to do so due to childcare arrangements.

McCown became agitated and told Jenkins that her availability was not an issue with ML and did not become an issue until after the union organizing began. McCown told Jenkins that Jenkins was not caring for employees. McCown and Jenkins discussed employees' concerns about inadequate parking and storage. At some point Jenkins asked McCown, why she worked at Starbucks if she hated the company so much, Tr. 79, 1264.

McCown alleges that her hours of work were reduced substantially due to her union activity, Tr. 80. Respondent's brief at page 27 takes issue with this claim on the basis of its timecard records and asserts that they undermine McCown's credibility generally.[19]

McCown testified that she worked on a rotating schedule depending on her husband's work schedule (24 hours on; 48 hours off) and explained this to Jenkins. Tr. 81-82. This is consistent with the timecard records which show that McCown worked between 37.5 and 31 hours between November 15, 2021 and December 12, 2021 and then did not work at all until January 6, 2022.

Given the issue of McCown's credibility it is worthwhile to set forth her entire work history during 2022.[20]

1/6/22 start 0900
Stop 5:35 p.m.
1/7 start 10:00 a.m.
Stop 6:30 p.m.

[19] The timecard records G.C. 46 a & b were received without objection and are cited in both the General Counsel and Respondent's briefs. There was no testimony about these exhibits. I assume they are accurate and that Respondent's summary of those records in its brief are accurate.

Respondent also attacks McCown's credibility with regard to what was said to her by Drake Bellis during her PDC, R. brief at 33-34. Bellis did not contradict her. Thus, I credit McCown.

Respondent further challenges McCown's testimony because her documented coaching bears a date of February 26, rather than February 16, as McCown testified. The document was prepared on February 16. The fact that at the bottom it indicates that Drake Bellis delivered it on February 26 does not establish that is accurate. I do not credit Bellis' response to a leading question at Tr. 1450 that he delivered the coaching on February 26. In fact, his testimony strongly indicates that Bellis did not know or remember the date he delivered the coaching. There is no date indicating when McCown signed it and no explanation for why her signature is not on the document. As G.C. Exh. 21 demonstrates, Respondent's disciplinary documents do not necessarily prove anything.

[20] It is possible that I have missed some entries.

1/8 start 0800
Stop 4:25
1/11 start 0700
1:30 p.m.
1/14 6:45 a.m.-1:40 p.m.
1/18 11:30 a.m-3:28 p.m.
1/26 10:05-4:00 p.m.
1/27 1:07 p-9:26p
1/30 1:31p-9:36 p
1/31 6:35 a -1:36 p-Monday
2/1 9:15a-3:03Tuesday
2/4 8:29-4:58 p-Friday
2/11 1:00 p-9:33 p.m.-Friday
2/12 1:00p-9:45p-Saturday
2/15 10:30 a.m.-5:34 p.m. Tuesday
2/22 9:58-a.m.-5:05 p Tuesday
2/24 2:01p-9:33-Thursday
2/25 10:01 a-5:58 p-Friday
2/26 7:58a-3:12-Saturday
2/28 11:02 a-5:06 -Monday
3/1 9:53a-5:00p-Tuesday
3/3 6 p-7p Thursday
3/4 9:56a-5:05 p-Friday
3/5 8:31-5:39-Saturday
3/7 1:30 p-2:15p-Monday-McCown calls in sick after acrimonious telephone conversation with Sara Jenkins.
3/8 9:00-5:17 p-Tuesday
3/11 9:07a-5:09p—a Friday, the last weekday McCown worked.
3/20 11:56-3:02p-Sunday
3/26 9:00a -4:35 p- a Saturday, the last day McCown worked at 75th street.

From these records I am unable to determine whether McCown's hours were reduced generally after the union campaign started. However, the records establish that she started work after 8:00 regularly on weekdays until March 11 and did not work any weekday afterwards.

On about February 14, [21] Hannah McCown told Sara Jenkins that she had an arrangement with the former store manager, M.L., by which McCown was available for work depending on her husband's rolling schedule as a fireman. McCown told Jenkins that M.L. also allowed her to

[21] Sara Jenkins testified that the first time she discussed McCown's availability with McCown was on March 7. 2022, Tr. 1268. That day Jenkins and McCown had a very acrimonious phone call which was partially recorded. G.C. Exh. 13. Later Jenkins testified she wasn't sure of the date when she first raised the issue of McCown's availability, Tr. 1336-37. McCown testified the discussion took place on about February 14. I credit McCown. There is no evidence that any manager indicated that McCown's availability was insufficient prior to the filing of the representation petition on February 2, 2022.

start work at 8:00 so that McCown could take her daughter to school.[22] Respondent introduced no evidence to contradict this.

Jenkins told McCown that her schedule was not consistent with Starbucks' needs. Jenkins told McCown she could not come in at 8:00 a.m. any longer. The store's busiest hours are from 7:00 a.m. to 9:00 a.m. on weekdays; 8-10 on Saturday and Sunday.

Either before or after that conversation, McCown started looking for a full-time job. At the end of February, McCown told Jen Seymour that she would have to take a demotion from shift supervisor to barista and work part-time. Jen Seymour agreed that McCown could work several nights a week and a Saturday or Sunday depending on her availability.[23] At some point, McCown's wage rate dropped from $15+ to $12 per hour. She was only scheduled on weekends, often on both Saturday and Sunday. Seymour told McCown that she could not work weekdays if she wasn't going to come in until 6:00 p.m. After March 14, McCown was working at her other job from 8-5:30. McCown stopped working at Starbucks on about March 26 and officially resigned on April 8. The General Counsel asserts McCown was constructively discharged.

On February 16, Respondent issued a documented coaching to McCown for wearing white shoes to work on February 15 after being told that Respondent's dress code would be enforced in the future, G.C. Exh. 7. Sara Jenkins instructed Drake Bellis to give McCown this warning. McCown had not received discipline from Starbucks previously.

On March 11, Sara Jenkins came to the 75th street store and gave Hannah McCown a final written warning, G.C. Exh. 15. The warning recited two instances of alleged misconduct; as closing shift supervisor McCown left a cash envelope out of the safe on February 24, and being rude to Jenkins over the phone on March 7. There is no evidence that Respondent raised the February 24 incident with McCown prior to March 11. During the intervening 2 weeks, the acrimonious March 3 meeting had occurred and I infer a relationship between the discipline for the February 24 incident and the March 7 telephone call.

According to McCown, the 75th street store was short staffed on March 7. McCown, the shift supervisor on the closing shift, asked the new manager, Jen Seymour, if she could turn off the mobile ordering system. Seymour told McCown to call Jenkins. Jenkins asked McCown for the Customers Per Hour (CPH). McCown said she could not find it. Jenkins told McCown that as a shift supervisor, she should know where to find it. Jenkins said she would not allow the mobile ordering system to be turned off.

McCown had apparently been told previously that if she went from a shift supervisor to a barista, her wage rate would be $12 per hour. McCown asked why this was so in light of the length of her prior employment with Starbucks. Jenkins said the reason was the length of the

[22] The context of the conversation on March 7, indicates that McCown had already been told that she could not be a shift supervisor with the schedule she had worked under M.L. and that she would have to accept a demotion to barista. G.C. Ex. 13. Moreover, the inquiry as to why McCown worked at Starbucks if she hated it so much did not occur in the recorded portions of the conversations on March 7. Jenkins corroborated McCown's testimony that Jenkins asked McCown why she worked at Starbucks if she had hated it so much, Jenkins could not recall the date, Tr. 1264.

[23] Seymour did not testify to the contrary.

break in McCown's employment. The conversation became very acrimonious. McCown repeatedly interrupted Jenkins. Jenkins also spoke over McCown. Jenkins told McCown they would have a "discussion" about the disrespectful way McCown spoke to her, G.C. Exhs. 11-13. McCown hung up on Jenkins.

After the call with Jenkins, McCown called store manager Jen Seymour and told her she was feeling ill. Seymour asked McCown if she had performed the "Covid Coach." This is an application on the store IPads into which an employee enters their symptoms and determines whether they need to leave. McCown told Seymour that Covid Coach indicated she should leave the store. Seymour said she would call McCown back. 10-15 minutes later, Seymour called and told McCown she would be coming to the store to close it. Seymour did not tell McCown to leave.

30 minutes later, Seymour arrived and allowed McCown to finish pulling inventory. McCown left the store about 90 minutes after she first notified Seymour that she was feeling ill. Respondent did not discipline McCown for staying at the store those 90 minutes.

Hannah Edwards' work schedule

Hannah Edwards, a leading proponent of unionization was a community college student while working at Starbucks. From sometime in January 2022 until March 11, 2022, Edwards attended classes on Tuesday and Thursday and very rarely worked at Starbucks on those days.[24] Prior to March 11, 2022, Edwards generally worked 5 hour shifts on Monday, Wednesday and Friday and 8 hours on Saturday, G.C. Exh. 46(a).

March 11, 2022, the same day that Sara Jenkins gave Hannah McCown a written warning, she told Hannah Edwards that Respondent was deciding how many supervisors they needed at 75th street and that the schedule she had been working no longer worked for Respondent Tr. 313. Jenkins stated Edwards' Monday, Wednesday and Friday shifts were not long enough; that they had to be at least 7 hours. Moreover, Jenkins told Edwards that her weekend availability was insufficient and that she had to make herself available on both Saturdays and Sundays each week to remain a shift supervisor. Starbucks management had never taken issue with Edwards' availability prior to March 11, 2022.

Edwards told Jenkins her class schedule would not allow an additional weekday and that since she was already working Saturdays, an extra day on the weekend would require Edwards to work Friday, Saturday, Sunday and Monday. Sunday was the only day of the week that Edwards and her husband were consistently off of work. Jenkins told Edwards that unless she increased her availability she would have to switch from shift supervisor to barista, which would result in a $5 per hour pay cut.

[24] On Tuesday, January 25, 2022, Edwards worked from 5:05 a.m. to 2:41 p.m. On Thursday, March 3, she worked from 6:00 p.m. to 7:00 p.m. She did not work any other Tuesday or Thursday after January 6, 2022, G.C. Exh. 46(a).

By 2022, Hannah Edwards had worked for Starbucks for 12 years at various stores with breaks in service. She had been a store manager at one point. Edwards' last stint at Starbucks was at 75th Street from August 2020 until April 2022, when she resigned.[25]

In 2021 and 2022, Edwards was a shift supervisor at 75th Street. She was also a student at Johnson County Community College. In 2021 store manager ML allowed Edwards to work a schedule that excluded Tuesday and Thursday, the days she had classes. ML did not require Edwards to be available on both Saturday and Sunday. In the 8 weeks that Edwards and Drake Bellis overlapped when he was the store manager at 75th Street in 2020., he did not object to her schedule.[26] Neither Jenkins, nor Bellis, nor Seymour objected to Edwards' schedule prior to March 11, 2022.

The General Counsel alleges that Respondent, by Sara Jenkins refused to let Edwards work this schedule due to her animus towards Edwards union activities. The evidence of anti-union animus is as follows:

As stated earlier, on February 1-2, 2022, there was a significant snowfall in the Kansas City area. Hannah Edwards opened the 75th street store as scheduled at 5:00 a.m. on Wednesday, February 2. At about 7:00 a.m., District Manager Jenkins arrived at the store. Jenkins coached Edwards for not being pleasant to her that day and the previous Saturday. Jenkins and Edwards discussed the parking and storage issues at the store. They also discussed the employees' letter to Kevin Johnson. Edwards told Jenkins the Kevin Johnson letter wasn't personal. Jenkins responded, "it feels personal when you put my name in the letter," Tr. 1263. Even before the representation petition was filed, Edwards had spoken to Jenkins about the very contentious parking issue on behalf of herself and other employees, Tr. 1238.

Edwards was present at the contentious meeting at the Marriott hotel on March 3, and was outside when Jenkins had Marriott management call the police. Jenkins was aware that Edwards had recorded the March 3 meeting and on March 11, insisted that Edwards sign the employee handbook that prohibits recording in a Starbucks store. Then Jenkins told Edwards that her availability no longer worked for Starbucks. I find that Jenkins would not have done so in the absence of Edwards' union and other protected activities.

Discharge of Alydia Claypool

Alydia Claypool was one of three employees at the Starbucks 75th street store who was terminated between March 28 and April 5, 2022, during the mail ballot election. Between February 1, 2000 and March 28, 2022, Starbucks did not terminate any 75th street store employee.

[25] The General Counsel is not alleging that Edwards was constructively discharged. Respondent's brief suggests that it was Edwards' busy schedule, rather than anti-union animus that led to the reduction in her hours. Edwards took a job at a flower shop that paid $3.83 less than her job at Starbucks, Tr. 420. I find that Edwards sought other employment at least in part in response to Jenkins' reaction to the organizing campaign. Her resignation letter, G.C. Exh. 30, suggests as much.

[26] Bellis did not contradict Edwards. M. L. did not testify in this proceeding.

Starbucks hired Alydia Claypool in about 2018. She started working at 75th street in April 2021 as a shift supervisor. On March 28, 2022, Respondent terminated Claypool. She was reinstated on May 2, 2022 pursuant to an internal company appeals process.[27] At the time of the hearing in this case, Claypool was employed as a shift supervisor at 75th Street.

Claypool's name appears on G.C. Exh. 5, the letter to CEO Johnson. On February 28, 2022, she also signed the demand for recognition sent to Starbucks managers on March 7. Claypool attended the March 3 company meeting and was outside the Marriott hotel when Sara Jenkins came outside and told employees to leave. Claypool's name is the first on the list of employees notifying Respondent that they intended to go on strike on March 19, 2022, G.C. Exh. 16..

On Saturday, March 19, prior to the start of the strike that occurred that day, employee Calvin Culley attempted to give Jen Seymour a letter announcing the intention of 15 employees, including Claypool and 2 others (Michael Vestigo and Maddie Doran) who were later terminated, to strike that day, G.C. Exh. – 16.[28] According to the letter, the employees were striking to protest cuts in their hours, retaliation and Starbucks refusal to recognize the Union.

The letter continued:

> The response to our union campaign from our district manager, Sara Jenkins has been aggressive. She has cornered us one on one, sometimes with another manager to intimidate us. She has forced us to decide between being demoted, resigning or changing availability that conflicts with college classes and second jobs. She accused one of our trans partners of felony theft without proof, and held a "training" meeting to tell us how a union would not benefit us. The union ballot instructions she posted in our store are urging us to vote no and we are done being bullied. Our organization is legal and protected by law and we expect that to be respected going forward.

Sara Jenkins told Seymour not to accept the document. Culley left the document, G.C. Exh. 16 on a desk in the back of the store, next to the door, Tr. 912. I infer that Respondent's management, including Jenkins, became aware of its contents. Jenkins testified that she received a text announcing employees' intention to strike, Tr. 1285. So far as this record shows, there was no such communication other than G.C. Exh. 16.

Claypool, who was not scheduled to work on March 19, arrived at the store at 8:00 a.m. when the strike started and participated in the strike and picketing until it ended at 5:00 p.m. The 75th street store opened at 5:00 a.m., but closed at 8:00 when the morning shift left to join the strike. Tr. 1285.

Claypool comes to work on March 20, 2022

[27] The same day that Starbucks realigned its districts in the Kansas City area.

[28] Seymour and Sara Jenkins came to the store on the morning of March 19 to insure that it would be closed properly, Tr. 1285.

On Sunday, March 20, 2022, the day after the strike, Alydia Claypool was scheduled to work from 5:00 a.m. to 2 p.m. as shift supervisor. She arrived at the store about 10-15 minutes before her shift. Soon after she arrived, Claypool performed a required COVID check-in process, which entailed taking her temperature and answering questions about any symptoms. The only other employee present was barista Hope Gregg.

Claypool's temperature was above 100.4 and she had a few symptoms that were consistent with COVID. She thought her temperature might be the result of the sunburn she got the day before while picketing and demonstrating outside the store.

Claypool called store manager Jen Seymour, who did not answer because she was still asleep. At 5:17 a.m. she texted Seymour to tell her that she had a fever of 100.4 and some symptoms. Claypool told Seymour she thought she was suffering from sun poisoning rather than COVID. She asked Seymour what she should do, stating that she did not think she could get ahold of another employee, but she could try.,

At 5:50 a.m. Seymour responded, telling Claypool that Respondent's COVID rules required her to isolate for 5 days or have a negative test. At 5:53 Seymour told Claypool she would have to close the store until another employee could arrive, Tr. 1539, G.C. Exh. 25. Claypool was prohibited from leaving the store open if Gregg was the only employee in the store. Seymour asked Claypool if the "temporary closed" signs were still up at the store. At 5:54, Claypool said they were not and that she would text Maddie Doran and Hannah [Edwards] to see if one of them could come in.

Seymour's texted at 5:53, "Alright so unfortunately you will have to close back up until someone can get there," suggests that Seymour expected Claypool to wait until another employee arrived. Although Seymour testified that she told Claypool that she and Gregg had to leave the store, Tr. 1539, Seymour's texts say nothing about Gregg, who would have been in the store alone if Claypool went home, which would have been a violation of Starbucks' rules. Seymour did not testify as to when she told Claypool that Gregg would have to leave or that she told Claypool that both employees were to leave the store and not perform any other tasks. Both Claypool and Gregg had tasks to perform prior to leaving the store, Tr. 566.

At 5:54 Claypool texted again that she would text Doran and Edwards. Seymour did not tell her to leave the store immediately.

Claypool apologized for calling Seymour so early; to which Seymour responded, "no problem,: at 5:55. Seymour did not indicate that Claypool was in any disciplinary trouble for her conduct.

G.C. Exh. 25.

Jen Seymour and Claypool had a telephone conversation between 5:17 and 5:50. According to Seymour the call took place at about 5:15. According to Claypool it occurred shortly before 5:50. Seymour testified that there were 2 calls, the second just before 6:00 a.m., In the second call, Seymour testified, "That is when I gave her the final "You need to leave the store." However, Seymour did not tell Claypool she had to leave the store immediately, she told

Claypool, " she needed to just secure the store and leave." Tr.1552. Securing the store required Claypool to stay in the store for some period.

Seymour testified that:

> I told her that I know that she is not supposed to stay in the store, but I wasn't one hundred percent sure of the procedure of her logging her vaccination status, and failing the COVID coach., Tr. 1538.

Seymour also testified that on Monday she noticed that Claypool did not clock out until 6:15 a.m. on Sunday. Seymour so informed Sara Jenkins.

Claypool next came to work at 0502 on March 22, and worked a full shift until 1:27 p.m., G.C. 46(a). Although the record is silent I assume she did not have COVID. Claypool also worked full shifts on March 23, and 27.

On March 28, Claypool worked from 5:30 a.m. to 2:00 p.m. Then, Respondent terminated Claypool ostensibly for staying at the 75th street store for 1 hour and 14 minutes after failing the COVID check instead of leaving the store immediately on March 20. On March 7, Hannah McCown remained at the store for about an hour and a half after informing Seymour she failed the COVID coach and was not disciplined for this, Tr. 136-40.[29]

G.C. Exh.26. [30].

The record establishes that Seymour knew by 5:25 that Claypool had failed the COVID coach and did not tell her she had to leave the store until about 5:50 or 5:53.[31] She did not tell Claypool she should leave immediately, Seymour also did not tell Claypool that she and Gregg had to leave the store immediately. In fact, Seymour testified that Claypool needed the secure the store before she left, Tr. 1539. When Claypool texted at 5:54 that she would text Doran and Edwards, Seymour thanked her, she did not tell Claypool to leave immediately or that Seymour would try to find a replacement for Claypool.

Claypool availed herself of an in-house appeals process and was reinstated, without explanation, on May 2, 2002.[32] There is no evidence that Respondent expunged Claypool's personnel records or that it explained to other employees either why Claypool had been terminated or why she had been reinstated. Seymour merely told other employees that Claypool was coming back to the store as a shift supervisor, Tr. 1550.

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[29] McCown's testimony in this regard is uncontradicted.

[30] I glean this from G.C. 26, an unsigned termination notice. Respondent did not offer into evidence a signed termination notice and gave no explanation for Claypool's termination other than the above quoted testimony of Jen Seymour, who played no role in making the decision to terminate Claypool. Sara Jenkins made the decision to terminate Claypool, Tr. 1590. She did not testify as to the reason for Claypool's termination or the involvement of anyone else in the decision.

[31] Seymour testified that she read Claypool's text before calling her, Tr. 1538.

[32] May 2, was the day Respondent offered Claypool her job back. Claypool's first day back at work was May 9, 2022.

On April 1, 2022, Respondent discharged Michael Vestigo.

Michael Vestigo began working at the 75th street store on November 2, 2020. Respondent discharged him on April 1, 2022. The decision to terminate Vestigo was made by Sara Jenkins, Tr. 1467.

Vestigo engaged in union activity and Respondent was aware that he did so. His name was on the letter sent to CEO Kevin Johnson in January, G.C. Exh. 5 and the petition emailed to Sara Jenkins and Drake Bellis on March 7, seeking immediate recognition of the Union. His name also appears on the letter informing Respondent that 15 employees intended to go on strike on March 19. This letter accused Jenkins of bullying employees. Vestigo openly wore a union pin on his apron at work throughout February and March. He did not attend the March 3 company meeting and was not disciplined for missing it. Prior to April 1, 2022, Respondent had not disciplined Vestigo.

On March 11, employee Maddie Doran returned to the 75th street store after meeting with District Manager Jenkins and Drake Bellis. Doran told fellow employees Michael Vestigo and Hannah McCown that she had been accused of theft. All 3 became quite agitated. Store Manager Jen Seymour overheard the 3 talking to each other through her headset. Doran, at one point, said that Jenkins had told Doran that she needed to remain professional and respectful during her conversation with Jenkins. Vestigo replied, "he would show Sara respect with his fist to her fucking mouth." R. Exh. 33. Sara Jenkins was not at the 75th street store on March 11, when this occurred.[33]

Seymour worked from 6:30 a.m. to 3:00 p.m. on March 11. Sometime that day she called Jenkins and told her what she had overheard. Vestigo continued to work until 8:04 p.m.

Vestigo reported to work at 10:29 on Sunday, March 13 and worked until 7:03 p.m. His next shift was 11:29-7:00 p.m. on March 16. Jen Seymour started work at 1:00 p.m. on March 16 and did not say a word to Vestigo about what occurred on March 11. She left work at 9:30 p.m. There is no indication that Seymour was afraid of Vestigo.

Jenkins directed Seymour to write a statement as to what occurred on March 11. Seymour emailed the statement to Jenkins on March 14 at 6:33 p.m. Jenkins emailed the statement, R. Exh. 33, to Kimberly Harris, who works in Starbucks' human resources/partner resources within 2 minutes, R. Exh. 69.[34] There is no evidence of Respondent doing anything further about Vestigo's alleged threat until March 26, after Vestigo signed a letter attacking Jenkins' management style personally and after he participated in the March 19 strike.

On March 19, Vestigo took part in the employee strike at the 75th street store from 9:00 a.m. to 5 p.m. and stood out from other participants because he was wearing a wolf-like costume shown in G.C. Exh. 23. That Vestigo owned such a costume was common knowledge.

[33] Jenkins was at 75th St. earlier on March 11 to speak to McCown and Edwards. Since Seymour testified that she called Jenkins to tell her what she heard, I assume Jenkins had left.

[34] There is no evidence of the extent, if any, of Kimberly Harris' role in deciding to terminate Vestigo.

The only evidence of an investigation into statements made by Vestigo occurred on March 26 when Jacqueline Neese, a store manager at another store, and Drake Bellis went to the 75th street store to interview Maddie Doran and Hannah McCown. Respondent offered no explanation for the 15 day delay from when Jenkins was aware of the alleged statement until it was investigated.

Seymour never asked Vestigo, Doran or McCown about what was said about Sara Jenkins on March 11. Her word would have been sufficient to take disciplinary action against Vestigo, if it was warranted. Respondent had no need to talk to Doran and McCown. In fact, the statements taken from McCown and Doran gave Respondent no additional information upon which to terminate Vestigo.

If further investigation was warranted, it would have been to interview Vestigo, which Respondent did not do. The only non-hearsay evidence of what Vestigo said on March 11 about Jenkins is Seymour's testimony at Tr. 1532. That is the only evidence upon which Respondent could conceivably decide to terminate Vestigo. It had this evidence since March 14, at the latest.

On March 26, Drake Bellis and Jacqueline Neese, a store manager at a different Starbucks, interviewed Maddie Doran and Hannah McCown. They did not talk to Vestigo. According to an email sent by Neese to Sara Jenkins, Doran reluctantly confirmed that Vestigo had said he wanted to punch Jenkins in the face, R. Exh. 68.[35] However, Neese did not testify, so this document is classic hearsay and not entitled to any weight as to whether Doran said this or not.

Drake Bellis emailed Jenkins a similar statement, R. Exh. 19. This is also hearsay as to what Doran said. At trial, when Bellis testified about his conversation with Doran, he said,

> The conversation -- I asked her -- she -- she was
> kind of not remembering, but I asked her again. I said,
> "Did he say that?
> She admitted that he did say that, to me.
>
> Tr. 1459.

I do not consider it accidental that Bellis never testified under oath as to exactly what Doran told him about what Vestigo said on March 11. I decline to credit his testimony on this issue.

Doran testified that she did not remember telling Neese and Bellis that Vestigo said . anything similar to wanting to punch Jenkins in the face, Tr. 818-19. Respondent did not take a statement from Doran. Bellis did not ask her for one, Tr. 1478. Respondent's managers have taken employee statements on some occasions. For example, Jen Seymour asked employee Ally

[35] This exhibit is in an electronic file labelled Respondent's exhibit 67-75. When you open the file, it appears that exhibits 67-69 are missing. If you scroll up, they are there.

Miloy for a statement to corroborate the fact that Mattie Doran left the drive-in and walk-up windows unlocked on March 29, R. Exh. 22.

I also see Respondent's failure to take a statement from Doran to be more than an accidental oversight. .

Under oath, Doran testified that she did not recall Vestigo saying anything similar to a threat to anyone in management, Tr. 703-04, 815. She stated the same thing in an affidavit given under oath on April 8, 2022, Tr. 816-17.

No one questioned Vestigo about this incident. When he was discharged on April 1, he told Jen Seymour he did not remember saying anything like that of which he was accused. Seymour refused to discuss this with Vestigo, she told him to sign his termination notice and leave. Seymour did not tell Vestigo that she overheard him. Between March 11 and April 1, Vestigo continued to work his normal shifts, 5 days a week, 32-35 hours a week. Seymour put him on her work schedule for dates beyond that.

I credit Jen Seymour's testimony that Vestigo said what he is accused of saying. Also, Hannah McCown's testimony at Tr. 148-51 suggests he said at least something similar.

On April 1, 2022, without explanation, Respondent handed Vestigo a termination notice, G.C. Exh. 24. It purports to terminate Vestigo for violating Starbucks' Workplace Violence Policy, R. Exhs. 30 & 31, which provides in pertinent part:

> If there is a report of workplace violence or a threat of violence, immediately inform your next level leader and Partner Resources. Violent conduct or behavior prohibited are those that significantly affect the workplace, generate a concern for personal safety or could result in damage to property, physical injury or death.
>
> These include, but are not limited to:
>
> …
>
> Statements or behaviors that can reasonably be perceived by a partner as intimidating, frightening or threatening and that generate concern for personal safety.
>
> …
>
> Threatening or violent words delivered in person or remotely, including by phone and email, text or other forms of social media.
>
> **Any partner who engages in conduct or behaviors involving workplace violence or a threat of violence may be subject to immediate separation from employment.**
>
> …
>
> Partners who believe they are in immediate danger should remove themselves from the dangerous situation if they can do so safely and should immediately contact local law enforcement authorities.

Manager responsibilities

Complete required documentation

Participate in investigations conducted by Partner Resources or Ethics & Compliance, initiate recommended actions and communications as the result of an investigation as appropriate

I find that regardless of what Vestigo may have said, Respondent did not believe he was threatening Jenkins. I also find that Respondent did not decide to terminate Vestigo until shortly before Bellis and Neese did their investigation on March 26. Otherwise, Respondent would have fired Vestigo immediately and reported the threat to the police. Pursuant to Respondent's workplace violence policy, it could have terminated Vestigo on March 11. There is no explanation for why it did not. The reason it did not do so is that it did not consider Vestigo's remark to be a threat of violence. In sum, I find that Respondent's reasons for terminating Vestigo were pretextual and were related to its animus to his union activities, particularly his participation in the strike and his signature on the March 19 letter.

Sara Jenkins testified that she was removed from the investigation of Vestigo because it involved her, Tr. 1591. However, at Tr. 1308, Jenkins testified that she investigated a scenario and partnered[36] with the right resources to request his separation. Jenkins testified that she had Seymour[37] and Neese talk to witnesses and get statements.

Drake Bellis testified that Jenkins is the person who decided to terminate Vestigo. Vestigo's termination notice is signed by Bellis and Seymour, who were not involved in the termination decision. Jenkins also testified that on March 14, she sent Seymour's statement to Kim Harris in Partner Resources. There is no evidence of the role, if any, played by Harris or any person other than Jenkins in deciding to terminate Michael Vestigo. Thus, there is no evidence as to the process between March 14 and April 1, by which it was determined that Vestigo should be terminated.

Thus, I find that Jenkins decided to terminate Vestigo as result of his union activities, particularly his name on the pre-strike letter and participating in the strike. After March 19, Jenkins used her knowledge of the March 11 incident as a pretext to terminate Vestigo.

On April 5, Respondent discharged Maddie Doran

Maddie Doran[38] was a shift supervisor at the 75th street store from June 2021 until April 5, 2022 when Respondent terminated her. Doran signed the March 3 petition demanding that Starbucks recognize the Union.

[36] Jenkins did not explain what "partnered" means.
[37] Seymour had no role in Vestigo's termination other than delivering his termination notice..
[38] Now Maddie Doran McCrory.

On March 11, 2022 Doran was told to meet with Sara Jenkins and Drake Bellis at another Starbucks. When Doran arrived Jenkins gave her a list of unverified deposits all relating to dates when Doran was the closing shift supervisor at 75th street. Jenkins said the deposits were $20,000 less than they should have been (the difference between what the store's computers or deposit slips show and the amount of cash received by the bank).[39]. Jenkins asked Doran if she had failed to fill out the courier log (a tally of the cash given to a Garda driver who took the cash to the bank). Jenkins said Starbucks had video recordings of Doran walking away from an open safe and not filling out the courier log. Doran testified that Jenkins accused her of theft. Jenkins testified that she made no accusations against Doran, Tr. 1298-99, 1347. 1584.

When recalled to testify on the last day of the hearing, Jenkins testified that she gave Doran a final written warning for 4 cash shortages. These cash shortages are different than the variances discussed with Doran on March 11. The variances concern disparities between what Garda delivers to the bank and the amounts in Starbucks' records. The cash shortages are something else.[40]

On March 19, Doran participated in the strike at the 75th street store. She also signed the letter announcing employees intention to strike, G.C. Exh. 16, which attacked Jenkins personally

On March 26, Sara Jenkins gave Doran a written warning for being responsible for 4 cash shortages and not showing up for work on March 23. However, there is no evidence that Respondent disciplined Doran for the cash shortages prior to March 26, when it decided to discipline her for missing work on March 23. There is no evidence in this record regarding cash shortages on December 7, January 9, 11 and February 10, other than the fact that they appear on the written warning given to Doran on March 26.

I find this was a post-hoc rationalization for disciplining her for missing work and to set the stage for Doran's termination. I would note that this discipline was issued 15 days after Jenkins spoke to Doran about the unverified deposits and a week after Jenkins became aware of the March 19 strike letter, which attacked Jenkins personally.[41]It was also at about the same time that Jenkins decided to terminate Michael Vestigo for his March 11 outburst.

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[39] There is a lot of very confusing testimony in the record as to what Jenkins was discussing with Doran. As best as I can tell, an unverified deposit is a variance between what the bank receives and what Starbucks' records (either deposit slips or computer records) show. Doran was disciplined for cash shortages, which I understand to be a variance between the cash she put in a safe and other records, i.e., store computer records or deposit slips she filled out. Exh. R-8 discusses shortages in a store's change fund. Discrepancies over $20 must be reported. It is not entirely clear to me what the change fund is to be compared with.

[40] The Supervisor leaves $200 in each cash register drawer and puts the excess in another envelope or bag and puts it in a safe. The supervisor then enters the amount into a computer. The amounts in the bag or envelope should match the amount in the computer.

[41] Jenkins testified that she "reached out" to Kim Harris, a Starbucks Human Resources Employee prior to giving Doran a final written warning. However, Jenkins spoke to Harris before speaking to Doran on March 11, Tr. 1583-84. The record does not indicate the extent of Harris' involvement in this or any other personnel decision involving 75th street store employees. The record shows no involvement by Harris in the discharge of Michael Vestigo or in the decision not to discipline Doran for cash shortages until March 26.

Jenkins also testified that

> So there was so many inconsistencies with the investigation around unverified deposits that it was unsubstantiated and it was -- it -- there was enough to warrant a conversation with Maddie, but not enough to result in corrective action. And the reason why there was enough to warrant a conversation is because the unverified deposits was not typical at this location until Maddie was left in the store by herself on a closing shift.

Tr. 1297-98.

Drake Bellis, who took notes of the March 11 meeting between Jenkins and Doran testified that Respondent did not issue any discipline to Doran as a result of the unverified deposits, Tr. 1456. He did not mention any discussion of the cash shortages mentioned in Doran's final written warning of March 26. Respondent has not established that it discussed these cash shortages with Doran prior to March 26, or ever, Tr. 791. 792.[42] .

Respondent gives Doran a corrective action on March 26, 2022

Doran had a dental procedure on Monday, March 21. Respondent approved her leave for Monday and Tuesday, March 21 and 22. On March 20 , Doran informed store manager Jen Seymour that she also needed to be off of work on Wednesday, March 23 to recover. Seymour responded by text on March 20 that Doran was required to find a substitute for Wednesday. Doran asked if she failed to do so would she be disciplined. Seymour replied that if Doran was unable to work or get a substitute the store would have to close early, G.C. Exh. 20. Seymour did not answer Doran's inquiry regarding discipline. Doran texted at least some co-workers on March 20, but did not find a substitute shift supervisor for Wednesday, March 23, G.C. Exh. 20 and 39.

Doran advised Seymour that she could not find a substitute but told Seymour that she was doing everything she could to find coverage. She asked for confirmation that she would not get in trouble if she did not find coverage. Doran called Sara Jenkins on March 21, but may not have reached her. Seymour spoke with Jenkins on March 21 and then advised Doran she would need to find coverage for Wednesday. Doran called Seymour on Tuesday night. She left Seymour a voice message stating that she had been unable to find a substitute and was in too much pain and taking too much pain medication to come to work the next day, Tr. 722.

On March 26, 2022, Drake Bellis and Jacqueline Neese came to the 75th street store, interviewed Doran about Michael Vestigo and gave her a Final Written Warning, G.C. Exh. 21.[43]

[42] Jen Seymour notified Sara Jenkins about the unverified deposits. It is not clear she said anything to Jenkins about the cash shortages for which Maddie Doran was allegedly disciplined.

[43] Bellis testified that his only role with regard to the Final Written Warning was that he delivered it. I infer the decision to give it was made by District Manager Jenkins. It is also clear that Jen Seymour did not make the decision to give Doran a Final Written Warning and had no role in Doran's termination other than provide Jenkins with the information about the unlocked windows, Tr. 1525., 1526. Seymour's testimony that Partner Resources made the decision to terminate Doran is not credible. First

The disciplinary form listed 4 instances in which Doran was held responsible for cash shortages over $20 on the following dates: December 7, 2021-$68.78; January 9, 2022-$150.66; January 11-$94.80 and February 10-$64.55, G.C. Exh- 21. The form also stated that on February 16, Doran failed to record the deposit information into the courier log bag. Respondent's exhibits 18 and 19 indicate that Respondent was not able to confirm any misconduct by Doran in regard to the $20,000 in unverified deposits.

The Final Written Warning continued:

> On 3/20/2022, Maddie informed the SM [store manager] that she would need Wednesday 3/22[44] off for a dental procedure. The SM Jen Seymour had already adjusted the schedules prior to this to accommodate the procedure that Maddie had originally requested 3/21 and 3/22. Maddie did not show up for her shift or find coverage for her shift which led to a loss of sales.[45]
>
> Maddie is expected to report any variances immediately and to properly record all information on the courier log per policy.
> Maddie is expected to follow the scheduling guidelines set forth by the company and ask off in advance for any known necessary time and/or find coverage for her existing shift.

The company policy that Respondent asserts Doran violated with respect to March 23 is as follows, G.C. Exh. 41.

> **Attendance and Punctuality**
> 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. If a partner cannot report to work as scheduled or will be late to work, the partner must call and speak directly with the store manager or assistant store manager with as much advance notice as possible prior to the beginning of the shift. If a manager is not in the store, the partner should notify the partner leading the shift. Leaving a message or note without first making reasonable attempts to directly contact a manager or the partner leading the shift is not acceptable. Sending an email or a text message is not an acceptable form of providing notice.
> ***Responsibility for Finding a Substitute***: Planned time off, such as for a vacation day, must be approved in advance by the manager. If a partner will be unable to report to work for a scheduled shift and knows in advance, it is the partner's responsibility to notify the store manager or assistant store manager and for the partner to arrange for another partner to substitute.
> In the event of an unplanned absence, e.g., the sudden onset of illness, injury or emergency, or when the partner is using paid sick leave allowable by law, the partner will not be held responsible for finding a substitute. The partner is still responsible for notifying the store manager or assistant store manager (or partner leading the shift if

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of all, there is no foundation for the proposition that Seymour was aware of the internal process that led to the termination decision. 1526-27.

[44] I assume this is a typo and should be March 23.

[45] The store closed early on March 23.

> the manager is not in the store) of the absence prior to the beginning of the shift so coverage can be arranged if needed.
> 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.
> Under certain circumstances, inability to work due to a medical condition may entitle a partner to a leave of absence.

Doran complied with this policy. She notified Jen Seymour well in advance of her absence on March 23. By the terms of this policy, Doran was not responsible for finding a substitute for that day. I find that Respondent violated Section 8(a)(3) and (1) in issuing this final written warning to Doran for 2 reasons. First, Doran did not violate company policy with respect to her absence on March 23. Secondly, if the final written warning was based on the cash shortages, it was the result of discriminatory motive. The 4 cash shortages cited in the warning occurred in December 2021, January 2022 and the last on February 10, 2022. Jenkins, who had already been informed of these shortages by Jen Seymour, did not discipline Doran for them until after the March 19 strike and letter announcing the strike.[46] From this delay, I infer discriminatory motive.

Doran fails to lock the drive-through and walk-up windows on March 28. Respondent terminates Doran on April 5.

Maddie Doran was the closing shift supervisor at 75th street on March 28. When closing the store that night she failed to properly lock the drive-through and walk-up windows. On April 5, 2022, store manager Jen Seymour presented Doran with a termination notice, G.C. Exh. 22. As grounds for the termination, the termination notice stated:

> At close on 3/28.2022, shift supervisor Maddie Doran failed to keep the store secure by not securing the store at close. Maddie did not lock the DT window and the walk-up window at the close of business. Maddie was placed on a final written warning on 3/26/2022 for multiple infractions including negligence with cash handling.

Although Seymour presented the termination notice to Doran, Sara Jenkins made the decision to terminate her employment, Tr. 1467. There is no credible evidence as to whether anyone else played a material role in that decision.[47]

There are obvious inconsistencies and shortcomings in Respondent's evidence regarding Doran's termination. While both Bellis and Jenkins testified that Doran was not disciplined for cash handling, the March 26 final written warning mentions it. More importantly, Seymour's testimony establishes that Doran's termination was based in part on her failure to show up for

[46] There is no explanation for why the corrective action form, G.C. Exh. 21 which was created on March 13, contains information about Doran's March 23 absence and was not presented to Doran until March 26. These facts suggest that Respondent was waiting for a pretext to discipline and discharge Doran.

[47] Jen Seymour testified that Partner Resources decided to terminate Doran, Tr. 1525-26. There is no foundation for that statement and I give it no weight.

work or find a substitute on March 23. With regard to March 23, Respondent has failed to establish that Doran violated any company rule.

Thus, Doran's termination was predicated at least in part on alleged misconduct that was not established to be misconduct. Moreover, there is no testimony from Sara Jenkins, the individual who decided to terminate Doran as to why she decided to terminate Doran instead of, for example, demoting her to a barista, as she did or planned to do with Hannah McCown and Hannah Edwards. Indeed, the record is completely devoid of any evidence as to the process that led to the decision to terminate Doran.

Facts pertaining to the alleged constructive discharge of Hannah McCown

As stated before, on about February 15,[48] Hannah McCown told Sara Jenkins that she had an arrangement with the former store manager, M.L., by which McCown was available for work depending on her husband's rolling schedule as a fireman. McCown told Jenkins that M.L. also allowed her to start work at 8:00 so that McCown could take her daughter to school.[49] Respondent introduced no evidence to contradict this.

Jenkins told McCown that her schedule was not consistent with Starbucks' needs. Jenkins told McCown she could not come in at 8:00 a.m. any longer. The store's busiest hours are from 7:00 a.m. to 9:00 a.m. on weekdays; 8-10 on Saturday and Sunday.

McCown started looking for a full-time job sometime in February and found one. At the end of February, McCown told Jen Seymour that she would have to take a demotion from shift supervisor to barista and work part-time. Jen Seymour agreed that McCown could work several nights a week and a Saturday or Sunday depending on her availability.[50] McCown's wage rate dropped from $15+ to $12 per hour.

Despite her agreement with Seymour, McCown was only scheduled on weekends, often on both Saturday and Sunday. Sometime in late February or March, Seymour told McCown that she could not work weekdays if she was not going to come in until 6:00 p.m. McCown told Seymour that she could not work Saturday and Sunday due to her family considerations.

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[48] Sara Jenkins testified that the first time she discussed McCown's availability with McCown was on March 7. 2022, Tr. 1268. Later she testified she wasn't sure of the date, Tr. 1336-37. McCown testified the discussion took place on February 15. There is no evidence that any manager indicated that McCown's availability was insufficient prior to the filing of the representation petition on February 2, 2022.

[49] Jenkins testified that she believed that the first time she talked to McCown about her availability was on March 7. I credit McCown that the two had a discussion about this before on about February 15. The context of the conversation on March 7, indicates that McCown had already been told that she could not be a shift supervisor with the schedule she had worked under M.L. and that she would have to accept a demotion to barista. G.C. Ex. 13. Moreover, the inquiry as to why McCown worked at Starbucks if she hated it so much did not occur in the recorded portions of the conversations on March 7. Jenkins corroborated McCown's testimony that Jenkins asked McCown why she worked at Starbucks if she had hated it so much, Jenkins could not recall the date, Tr. 1264. I find this occurred during the earlier conversation with McCown on about February 15.

[50] Seymour did not testify to the contrary.

Seymour rejected McCown's request to work weekdays at 6:00 p.m. after her other job ended at 5:30 p.m... McCown stopped working at Starbucks on about March 26 and resigned on April 8 via a text message with Jen Seymour. The General Counsel asserts McCown was constructively discharged

Analysis and legal conclusions regarding the discharges and alleged constructive discharge of Hannah McCown

General Principles

In order to establish a violation of Section 8(a) (3) and (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002).

Improper employer motivation may be inferred from circumstantial as well as direct evidence. *NLRB v. Link-Belt Co.,* 311 U.S. 584, 602, 61 S.Ct. 358, 367, 85 L.Ed. 368 (1941); *Birch Run Welding,* 761 F.2d 1175 at 1179 (6th Cir. 1985). Discriminatory motivation may reasonably be inferred from a variety of factors, such as the company's expressed hostility towards unionization combined with knowledge of the employees' union activities; inconsistencies between the proffered reason for discharge and other actions of the employer; disparate treatment of certain employees compared to other employees with similar work records or offenses; a company's deviation from past practices in implementing the discharge; and proximity in time between the employees' union activities or other protected activity and their discharge. *La Gloria Oil and Gas Co.,* 337 NLRB 1120 (2002); *Metro Networks, Inc.,* 336 NLRB 63 (2001). A discharge following closely on the heels of protected activity is particularly powerful evidence of discrimination, *Jim Causley Pontiac v. NLRB,* 620 F.2d 122, 126 (6th Cir. 1980).

Generally, to establish illegal motive the General Counsel must show that the discriminatee engaged in union or other protected activity, that the Respondent knew of that activity, and bore animus towards that activity sufficient to draw an inference that the employer was motivated by the protected conduct to take the adverse action against the employee.

In *Tschiggfrie Properties*, 368 NLRB No. 120, slip op. at 1 (2019), the Board held that "to meet the General Counsel's initial burden [under *Wright Line*], the evidence of animus must support a finding that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." [51]This requirement has been met in

[51] I am well aware that Board precedent has gone back and forth as to whether the General Counsel's initial burden includes demonstrating a causal relationship between the protected activity and the adverse action. Regardless, the outcome of this case does not depend on whether there are 4 elements to the General Counsel's initial burden or 3.

regard to all the discharges and disciplinary measures in this case. All of these actions followed on the heels of protected union activity, such as the Kevin Johnson letter, the filing of the representation petition, the March 3 meeting, and demand for recognition emailed to Respondent on March 7, the March 19 strike and letter announcing employees' intention to strike. Moreover, the record established that Respondent, particularly Sara Jenkins, bore considerable animus towards this activity due to the criticism of her management.

Respondent violated Section 8(a)3) and (1) in discharging Alydia Claypool

There is no question that Respondent knew of Alydia Claypool's activities in support of the Union and bore animus towards the employees who engaged in union activity, including Claypool. There is ample evidence to infer that Claypool's discharge would not have occurred in the absence of her union activity. The discharge coming soon after Claypool's participation in the March 19 strike and her name on the letter left for Respondent's managers on that date also supports my finding that the General Counsel met its initial burden in establishing that Claypool was discriminatorily discharged.

The fact that Respondent reinstated Claypool establishes that it cannot meet its burden of proving that it would have fired Claypool absent her protected conduct. Her reinstatement is a concession that her discharge was unjustified.[52] Even apart from Claypool's reinstatement, there is no evidence that Respondent would have terminated Claypool absent her union activity.

Store manager Jen Seymour did not tell Claypool she had to leave the store for at least 30 minutes after she knew Claypool had failed the COVID check. Even then, she told Claypool to secure the store before leaving. Seymour also knew that Claypool was at the store on March 20 for at least an hour after failing the COVID check and said nothing to Claypool indicating that she had acted inappropriately. It was not until Sara Jenkins got involved that a decision was made to terminate Claypool. Neither Jenkins nor anyone else testified as to why this decision was made, Tr. 1590.[53] Jenkins testified that she made the decision to terminate Claypool and did not testify that she did so on the recommendation of anyone else.[54]

[52] At page 74 of its brief, Respondent states that the decision to reinstate Claypool was made by Starbucks' Partner Contract Center , " a third-party entity upon which Starbucks relies to conduct independent reviews of employment decisions." I assume this to be an effort to absolve Respondent from responsibility (or credit) for the decision to reinstate Claypool. There is absolutely no evidence in this record that establishes any distinction between the Partner Contact Center and Respondent. There is absolutely no evidence as to the process by which Claypool was reinstated. I state again: her reinstatement is a concession that Respondent did not have a legitimate reason to discharge Claypool and that it would not have done so absent her union activity.

[53] At page 74 of its brief, Respondent states that Jenkins was following a recommendation from Partner Resources to terminate Claypool. There is no credible evidence to support this assertion. The only evidence in this regard is Jen Seymour's testimony at Tr. 1539-40. Respondent did not establish that Seymour, who clearly was not involved in the decision to terminate, would have any first-hand knowledge as to the process by which a decision was made to terminate Claypool.

[54] Claypool's reinstatement is not an effective disavowal of Respondent's unlawful termination. There is no evidence that Seymour told all employees about Claypool's reinstatement, or that she repudiated the unlawfulness of Claypool's termination or gave employees assurances that Respondent

Lingering at the store after failing the COVID coach did not mandate automatic termination by Starbucks.[55] As stated earlier, Hannah McCown stayed at the 75th street store for about 90 minutes on March 7, after notifying store manager Seymour that she had failed the COVID coach. McCown was not disciplined as a result.

It is hard to imagine a clearer case of discriminatory discharge.

The discharges of Michael Vestigo and Maddie Doran

In *Consolidated Biscuit Co.,* 346 NLRB 1175, 1177 ftn. 17 (2006) the Board stated:

> The dissent criticizes our analysis, contending that we should view these terminations as part of an unlawful pattern rather than looking at each employee's discharge in isolation. However, we find that nothing in the General Counsel's evidence of antiunion animus relieves the Board of its obligation to engage in a *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), analysis for each alleged violation of Sec. 8(a)(3). Accordingly, we separately discuss each discharge in turn, while keeping in mind the totality of the circumstances involved in this organizing campaign.

It is certainly true that each discharge must be evaluated independently. An employer may, for example, have a legitimate nondiscriminatory reason for discharging one employee but not another. The General Counsel's initial burden may also be met with regard to one employee and not another.

However, it is not true that a fact-finder must turn a blind eye to the discrimination against other employees in considering the alleged discrimination against their co-workers. A willingness to discriminatorily discharge one employee makes it more likely that an employer will discriminate against another. Moreover, the weakness in the Respondent's defense to one alleged discriminatory discharge should at least be taken into account in evaluating the defense to others. Finally, the Board has recognized in many cases that some Respondents, employers and unions, have a proclivity to violate the Act. That should not be ignored in evaluating an individual allegation of discrimination.

In this case, I find the discriminatory discharge of Alydia Claypool to be particularly blatant and should be considered in evaluating the closer questions with regard to the discharges of Michael Vestigo and Maddie Doran.

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would not discriminate against them because of union activities in the future, *Passavant Memorial Area Hospital,* 238 NLRB 138, 139 (1978). To the contrary, Respondent in its brief at pages 67-74 and 161-163 doubles down in justifying its unlawful termination of Claypool.

[55] That Jenkins on one prior occasion terminated a store manager for violating Respondent's COVID policy does not establish that Claypool's discharge was not discretionary. Moreover, the evidence regarding this prior termination is insufficient to establish that the individual's violation was indistinguishable from that of Claypool

Respondent violated Section 8(a)(3) and (1) by discharging Michael Vestigo

The General Counsel easily met its initial burden of proving that Respondent terminated Michael Vestigo in violation of Section 8(a)(3) and (1). Vestigo participated in union activities; Respondent was aware that he did so and bore animus towards those activities. The only real issue with regard to Vestigo's termination is whether Respondent established that it would have terminated Vestigo in the absence of his union activities. Not only did it not do so, but the pretextual nature of its defense is further evidence that Vestigo's discharge was discriminatory. In fact a finding of pretext defeats any attempt by the Respondent to show that it would have discharged Vestigo absent his union activities, *Rood Trucking Company,* 342 NLRB 895, 898 (2004); *Austal USA, LLC,* 356 NLRB No. 363, 363 (2010).[56]

Respondent obviously did not consider Vestigo's statement, which was not made directly to Sara Jenkins, to be a threat. If it did so it would have reported the threat to the police and terminated Vestigo immediately on March 11, when it was aware of his statement to Doran and McCown. Instead, Respondent never confronted Vestigo about the statement and continued to let him work as if nothing had been said for over 2 weeks. Seymour was not consulted and apparently did not have any idea that Vestigo was going to be terminated until she received the termination notice on April 1, Tr. 1535-36. Seymour had scheduled Vestigo for work even after April 1, Tr. 1549.

I conclude that Respondent did not meet its burden of proving that it would have terminated Vestigo in the absence of his union activities. Thus, it violated Section 8(a)(3) and (1) in doing so.

Respondent violated Section 8(a)(3) and (1) in discharging Maddie Doran

For reasons stated earlier, I find that Respondent violated Section 8(a)(3) and (1) in issuing Maddie Doran a final written warning on March 26. To repeat, the timing of the discipline for the cash shortages,[57] suggests discrimination and Doran was also disciplined for violation of a rule regarding absences from work with which she materially, if not totally, complied.

Since Doran's discharge is predicated in part on this illegal warning, her termination also violates Section 8(a)(3) and (1), *St Paul Park Refining Co., d/b/a Andeavor,* 368 NLRB No. 62 (2019); *Southern Bakeries,* 366 NLRB 78 (2018); *Dynamics Corp.,* 296 NLRB 1252, 1254 (1989) enfd. 928 F. 2d 609 (2d Cir. 1991); *Celotex Corp.,* .259 NLRB 1186, 1192-93 (1982).

[56] *Electrolux Home Products,* 368 NLRB No. 34 (2019) is distinguishable by the fact that Respondent therein displayed anti-union animus once seven months prior to the discharge of the alleged discriminate and had afterwards begun to bargain with the Union in good faith. In contrast, Vestigo's discharge was preceded by a litany of contemporaneous unfair labor practices, *NLRB v. Roemer Industries, Inc.,* 824 Fed. Appx. 396 (2020).

[57] The last cash shortage occurred over a month prior to the final written warning. There is no evidence as to when Sara Jenkins became aware of the shortages. In fact, there is no evidence regarding the cash shortages on December 7, January 9, 11 and February 10, apart from the fact that those dates appear on Doran's written warning. Doran's name appears on the pre-strike letter and she went on strike just prior to the written warning.

Like the other alleged discriminatees in this case, Doran engaged in union activity. Respondent was aware that she did so and bore animus to the union activities of its 75th street store employees. Respondent has not established that it would have discharged Doran in the absence of her union activity. It has not established that it ever terminated any employee for failing to lock up at night unless they were guilty of other serious misconduct. In its brief at page 81, Respondent states that, "Starbucks has consistently terminated partners for failing to lock the store's windows, long before any organizing activity began at Starbucks. (Resp. Ex. 66)." On the contrary, that exhibit and the entire record contains 1 instance of an employee being terminated for failing to lock up. That employee was terminated for failing to lock up after several previous instances of serious misconduct, such as leaving the pastry freezer door open the day before the employee failed to lock up, ruining food.

Constructive discharge of Hannah McCown

Board law on constructive discharge is summarized in footnotes 3, 4, 6, 7 and 9 of its decision in *Intercon 1 (Zercon)* 333 NLRB 223 (2001). Constructive discharges may be found pursuant to 2 legal theories: the traditional constructive discharge theory and the "Hobson's Choice" theory. The basic test for a traditional constructive discharge is whether the burdens imposed on the employee must cause, and be intended to cause, a change in working conditions so difficult or unpleasant as to force the employee to resign. Second, it must be shown that those burdens were imposed because of the employee's union or other protected activities, *Crystal Princeton Refining Co.,* 222 NLRB 1968, 1969 (1976). However, an employee's resignation is a constructive discharge if the employer reasonably should have foreseen that its actions would lead the employee to resign, *American Licorice Co.,* 299 NLRB 145, 148 (1990).

With regard to Hannah McCown, this is a Hobson's Choice constructive discharge. While Respondent had a business reason for refusing to allow Hannah McCown to report for work at 8:00 a.m., I conclude that it would not have so but for Sara Jenkins' animus towards McCown on account of her union activity. When an employee is forced to choose between working and caring for their children, the employer constructively discharges the employee if the employee chooses to care for the children. This is the case, as it is here, if the employer reasonably should have foreseen that its actions would lead the employee to resign. A case directly on point is *Bennett Packaging Co.,* 285 NLRB 602, 603, 607 (1987) in which the employer directed an employee to report for work one hour earlier, knowing that the employee could not because of childcare requirements. Another case on point is *Yellow Ambulance Systems,* 342 NLRB 804, 807 (2004).

Respondent's refusal to allow McCown to start work at 8:00 a.m. did not immediately cause her to resign. However, it started a chain of events that led her to resign. It forced McCown to accept a demotion, which in turn required her to look for another day job. The demands of her day job necessitated McCown to seek work at Starbucks no earlier than 6 on weekdays. Starbucks refusal to let her start at 6 p.m. on weekdays led McCown to resign her employment. All of these events are directly related to Respondent's refusal to allow McCown to continue starting work at 8:00 a.m. as she had been doing prior to the organizing campaign. Respondent is liable for all the consequences that flow from that discriminatory decision, see

Capitol Trucking, Inc., 246 NLRB 135 (1979); *St. Joseph's Hospital,* 247 NLRB 869, 873, 880 (1980).

In concluding that Respondent constructively discharged McCown, I rely solely on its refusal to continue starting work at 8:00 a.m. as she had been doing prior to the filing of the representation petition.[58]

Facts pertaining to the General Counsel request for an order requiring Respondent to bargain with the Union as the authorized representative of its full time and regular part-time baristas and shift supervisors at the 75th street store.

The first indication that Respondent received that employees at the 75th street store were organizing occurred on Friday, January 28, 2022. Employee Hannah McCown called Interim Store Manager Amanda Pittman and informed her that a representation petition would be filed. Pittman called District Manager Sara Jenkins about the union organizing that evening, Tr. 1260.

On January 31, 2022, an employee organizing committee emailed a letter to Starbucks CEO Kevin Johnson, G.C. Exh. 5. The letter had the printed names of 10 employees on it. The letter complained of staffing shortages, the cramped space inside the store and inadequate parking. As to parking, the letter stated, "We **refuse** the options presented by our District Manager, Sara J., to park two blocks away from our store or walk across five lanes of busy traffic, putting our safety at risk." Jenkins received the letter on Monday, January 31, and was upset by it, particularly since it mentioned her by name. Tr. 1261.

The letter when on to complain about the District Manager with regard to mobile orders. "In an attempt to "problem solve", our DM opted to cut our store's daily operating hours in half and vaguely directed us to "work our scheduled shifts at other stores" if we are not able to work within the reduced schedule.

The letter contended that the company plan created a hardship for gay, lesbian and transgender employees, who were particularly comfortable at 75th street since they made up half the workforce. The letter demanded more hours at 75th St. for the entire team and suspending mobile ordering to accommodate staffing.

On February 2, the Union filed a petition with the NLRB (14-RC-289926) to be the exclusive bargaining representative of the full-time and regular part-time baristas at the 75th street store. G.C. Exh. 35. The Union and Starbucks entered into a stipulated election agreement on February 24, 2022.

By virtue of that agreement, a representation election was to be conducted by mail. Mail ballots were to be sent out by March 16 and returned by April 6. They were counted on April 8. 6 employees voted in favor of representation by the Union, 1 voted against. Both parties filed

[58] Respondent relies on an assertion that McCown scheduled an interview with Farmers Insurance in early February. This is irrelevant for a number of reasons. First, it is not clear when McCown started interviewing with Farmers, when she knew Farmers would hire her and whether she would have accepted employment from Farmers had not Respondent prohibited her from starting work at 8:00 a.m.

challenges and objections to the conduct of the election. While the challenges have apparently been resolved, the objections are pending.

On March 3, at 6:00 p.m. Respondent by Sara Jenkins and Drake Bellis conducted a meeting at the Courtyard Marriott hotel in Overland Park. At that meeting employee Hannah McCown attempted to give Jenkins and Bellis a petition signed by 15 of the 18 or 20 employees working at the 75th street store. Jenkins and Bellis refused to receive it. Hannah McCown emailed the petition claiming majority status to Drake Bellis on March 7, with a courtesy copy to Sara Jenkins, G.C. Exh. 9.

The petition, addressed to CEO Kevin Johnson demanded that Starbucks recognize the Union as the exclusive bargaining representative of unit employees. G.C. Exh. 8.

Alleged violations at the Country Club Plaza store and relevant facts

The Union filed a petition to represent the employees at the Country Club Plaza store in downtown Kansas City, Missouri on January 31, 2022. Shortly thereafter employees sent a letter to CEO Kevin Johnson similar to the one sent by the 75th street store employees, G.C. Exh. 32. The names of 17 employees appear on that letter.

On February 22, 2022, store manager Eric Schmidt and assistant store manager Heather Neal conducted a staff meeting attended by 32-33 employees. Schmidt told the employees that compliance with the company dress code had deteriorated and that management was going to enforce it going forward. Schmidt specifically mentioned that the Starbucks apron must cover any logos on employees' shirts.

Schmidt had conducted a meeting with employees on November 3, 2021 in which he discussed a number of company policies, including the dress code. While he testified that he has enforced the dress code, he did not specifically contradict the testimony of employee Neal Fiedler, whose testimony I credit. Fiedler testified that from November 2021 until February 2022 employees regularly wore shoes, hats, shirts with visible logos and pins that were not compliant with the Starbucks dress code.

After Schmidt's February 22, 2022 meeting, Assistant Store Manager Heather Neal began strictly enforcing the dress code.[59]

Representation election ballots were counted on June 9, 2022 for the Country Club store and while challenges and objections to the conduct of the election were pending, Starbucks closed the store in August 2022.

[59] Respondent admitted that all persons named in paragraph 4 of the complaint are its supervisors and agents, with the exception of Ms. Neal., Tr. 23-24. Regardless of whether Ms. Neal was a supervisor, she was clearly Respondent's agent when enforcing the dress code. Employees would reasonably believe she was speaking and acting on behalf of Starbucks management, *Community Cash Stores*, 238 NLRB 265, 266 (1978). Among Neal's duties is assisting the store manager in coaching employees with regard to compliance with company rules, Tr. 1403. An individual who is an agent, but not a statutory supervisor may be a bargaining unit member. In fact, the unit shift supervisors at all 3 stores were Respondent's agents when enforcing its rules.

Alleged unfair labor practice and relevant facts at the Lawrence, Kansas store

The Union filed a representation petition for the Lawrence, Kansas store on March 28, 2022. When taking orders from customers, a barista asks for a name to put on the cup to call out when the beverage is ready to pick up. Customers sometimes give a fake name, which management at Lawrence never made an issue prior to April 2022, with exceptions. They would not allow employees to call out political slogans or obscenities.

On April 29, 2022, shift supervisors were handing out pro-union flyers and suggesting that customers use a pro-union slogan when ordering their beverages. Shortly thereafter, store manager Victoria Wolf texted the shift supervisors that employees are not allowed to call out anything other than a name or drink when calling out mobile or café orders. She stated in her text that "we talked about this a while ago…": we all know how to coach our partners that might not know that, " G/C. Exh. 34. Wolf did not testify in this proceeding. Her statements are thus hearsay and unreliable. The testimony of Korbin Hogan that this rule was not enforced prior to April 29, other than for political and obscene slogans, is credited, Tr. 1015, 1021-22.

The Union was certified as the collective bargaining representatives of all full-time and regular baristas and shift supervisors at this store on June 27, 2022. Respondent is apparently not contesting this certification, Tr. 1158.

Further Analysis and Conclusions

Respondent violated Section 8(a)(3) and (1) at both the 75th Street and Country Club Plaza Stores in more strictly enforcing its dress code after learning of the organizing campaigns and filing of the representation petitions and in telling employees it would do so.

While Starbucks is entitled to enforce its dress code, it violates the Act when it starts enforcing it or enforces it more strictly in response to union organizing, *La Reina, Inc.,* 279 NLRB 791 fn. 2, 803 (1986) enfd. 823 F.2d 1552 (9th Cir. 1987); *Schrock Cabinet Company,* 339 NLRB 182, 183-84 (2003); *Neises Construction,* 365 NLRB No. 129 (2017). The record herein establishes that Respondent stepped up enforcement of its dress code in response to union activity at the 75th street and Country Club Plaza stores and thus violated the Act at both.[60]

An employer also violates Section 8(a)(1) when it threatens stricter enforcement of its rules and when it in fact enforces its rules more strictly in response to union organizing, *Cadillac of Napierville, Inc.,* 368 NLRB No. 3, slip opinion at 3-4 (2019); *Fleming Companies, Inc.,* 336 NLRB 192 (2001). The record herein establishes that Respondent told employees it would more strictly enforce its dress code and that it did so. This establishes a violation of Section 8(a)(1).

[60] As discussed later herein, Respondent cannot avoid liability on the grounds that whatever lax enforcement existed prior to February 2, 2022 at 75th street was due to ML's ineptitude. ML was closely supervised by Jenkins and other store managers.

Sara Jenkins violated the Act by asking Hannah McCown, why she worked at Starbucks if she hated the company so much,

The Board has long held that remarks questioning why an employee continues to work for an employer violates Section 8(a)(1) if made on account of, or in response to the employee's union activity, *Padre Dodge,* 205 NLRB 252 (1973); *Equipment Trucking Co.,* 336 NLRB 277 (2001). Such remarks clearly convey that management considers engaging in union activity and continued employment essentially incompatible. Jenkins' statement was made in response to McCown's participation in the organizing campaign and after an acrimonious discussion of some of the issues raised by employees in that campaign. The remark violated Section 8(a)(1).

Respondent violated Sections 8(a)(5), (a)(3) and (1) in refusing to allow Hannah McCown and Hannah Edwards to work the schedules they had been working prior to the filing of the representation petition.

An employer violates the Act in making material changes to employees' working conditions in the critical period between the filing of a representation petition and a Board election, *Ayr-Way Stores,* 205 NLRB 1074 ftn. 3 (1973). The record establishes that Sara Jenkins prohibited Hannah McCown and Hannah Edwards from working the schedules they were working prior to February 2, 2022. This violates Section 8(a)(3) and (1) of the Act. I infer that Jenkins did so at least in part due to her substantial animus towards McCown and Edwards on account of their union activity, e.g. the Dear Kevin letter. *Yellow Ambulance Service,* 324 NLRB 804, 807 (2004). Jenkins rejected Edwards' schedule 8 days after the contentious March 3 meeting and days after receiving the employees' petition demanding that Starbucks recognize the Union.

Respondent cannot credibly argue that it is not responsible for these unilateral and discriminatory changes because of the fact that ML did not run the 75th street store properly. Sara Jenkins was the District Manager and ML's supervisor throughout the employment of McCown and Edwards. She kept close enough tabs on ML to put her on a PIP before her departure. Furthermore, Jenkins did not object to Edwards' schedule until March 11, 2022, six weeks after ML stopped managing the store.

Store Manager Lindsay Mills, acting on behalf of Jenkins, visited the 75th street store 3 times in a six week period during December 2020-January 2021and had weekly communication with ML. There is no evidence that Mills raised McCown or Edwards' schedules with either of them, or ML or Jenkins. Also, see Tr. 1183-85 regarding Jenkins' communication with ML.

Jenkins coached ML on staffing, Tr. 1187-89. There is no evidence that Jenkins raised the limited availability or accommodations given to any employee with ML or anyone else prior to the filing of the representation petition. If Jenkins had a legitimate non-discriminatory issue with the schedules of McCown and Edwards, she would have raised it prior to February 2, 2022.

Finally, there is no convincing evidence to support Respondent's assertion that McCown and Edwards' schedules were inconsistent with the needs of Starbucks business after the representation petition was filed, or before it was filed. The mere fact that the store's busiest

hours on weekdays are between 7 and 9 a.m. does not establish that McCown's schedule was inconsistent with the needs of Starbucks' business.

Respondent, by Sara Jenkins, violated Section 8(a)(1) by asking a Marriott manager to call the police to disperse employees congregating in front of the Marriott on March 3, 2022.

The record established that Marriott's manager called the police to disperse employees from the front of the Marriott only because Sara Jenkins asked her to do so. Respondent has not established that it had a property right to exclude the employees from this location. Therefore, by asking Marriott to call the police, Starbucks, by Sara Jenkins, violated Section 8(a)(1) of the Act, *Indio Grocery Outlet,* 323 NLRB 1138 (1997).

Drake Bellis violated Section 8(a)(1) in telling employees that if they selected the Union, managers would no longer be able to help bargaining unit employees in performing their tasks.

Drake Bellis' prediction that managers would not be able to help bargaining unit employees perform their tasks was not based on objective fact. This would depend on what the Union proposed in collective bargaining negotiations and what Respondent was willing to agree to. His statement was speculative and therefore violative of Section 8(a)(1).

Drake Bellis did not violate Section 8(a)(1) by telling employees that collective bargaining negotiations at Kroger took 400 days or more or that, "Bloomberg law estimates the first contract takes, on average, 409 days," and similar statements.

It is a violation of Section 8(a)(1) for an employer to threaten employees that selection of union representation would be futile, *UNF, West, Inc.,* 363 NLRB 886 (2016). However, Board law seems to hold that an accurate statement does not violate Section 8(a)(1) even if motivated by a desire to express the futility of selecting union representation and/or would reasonably be expected to convey the futility of organizing to employees. I find that this is why Drake Bellis mentioned 400 days or more and that many current employees would not be working at 75th street in a year. I see no other purpose for his making such remarks. Nevertheless, such statements appear to be legal under current Board law, *Medieval Knights, LLC,* 350 NLRB 194, 195 (2007). One could analyze such a statement as a prediction not based on objective fact since the duration of collective bargaining negotiations depends on the parties involved. However, it appears that an employer is free to make whatever statements it wishes, regardless of their desired and anticipated effect, so long as those statements are not inaccurate.[61]

Respondent, by store manager Victoria Wolf violated Section 8(a)(1) by enforcing its rules regarding calling out drink orders in a way it had not been enforced prior to the Union campaign

For the reasons stated above, I also find that Respondent violated Section 8(a) (1) at the Lawrence, Kansas store in prohibiting employees from asking customers to order drinks with a name other than their own or the name of the item they ordered. This was clearly done in

[61] To the contrary see , *Valmet, Inc.* 367 NLRB No. 84 at 2, 11 .(2019) [no wage increases because collective bargaining negotiations could drag on for some time].

response to union activity. There had not been such a general prohibition prior to the union campaign.

Conclusions of Law.[62]

1. Respondent by Drake Bellis, Sara Jenkins and Ellie Grose violated Section 8(a)(1) by telling employees that they would not or might not get the previously promised wage increases in 2002, if they selected union representation.
2. Respondent by Drake Bellis violated Section 8(a)(1) by telling employees that Respondent might not be able to hire new employees for the 75th street store if they selected union representation.
3. Respondent, by Drake Bellis violated Section 8(a)(1) by telling employees that if they selected the Union that managers could not help them with any tasks.
4. Respondent, by Drake Bellis violated Section 8(a)(1) by telling employees they would not be able to transfer to another Starbucks store if they selected the Union.
5. Respondent violated the Act by enforcing its dress code more strictly at the 75th street store and Country Club Plaza store after the Union filed its representation petition.
6. Respondent, by Sara Jenkins, violated Section 8(a)(1) by requesting Marriott management to call the police to disperse a group of employees congregating outside the Marriott.
7. Respondent, by Sara Jenkins, violated Section 8(a)(3) and (1) of the Act by refusing to allow Hannah McCown and Hannah Edwards to work schedules they had worked prior to the filing of the Union' representation petition.
8. Respondent violated Section 8(a)(3) and (1) by discharging Michael Vestigo, Maddie Doran and Alydia Claypool and constructively discharging Hannah McCown (Helverson).
9. Respondent violated Section 8(a)(3) and (1) by issuing a final written warning to Maddie Doran.

Remedy

This is an unusual *Gissel* bargaining case in that the Union prevailed in the election conducted in March and April 2022. Furthermore, Respondent knew by virtue of the Kevin Johnson letter, the demand for recognition it received by March 7 and the letter announcing the March 19 strike, that a majority of its employees at the 75th street store desired to be represented by the Union[63]. I recommend that Respondent be ordered to recognize and on request bargain

[62] Although the representation case is not before me, I would note that the violations at the 75th street store all took place in the critical period between the filing of the representation petition and the representation election.

[63] Respondent's brief chips away at each of these documents. However, the record as a whole demonstrates that the Union enjoyed the support of an overwhelming percentage of the bargaining unit. For example, the following employees testified to their signatures on G.C. 8: McCown, Edwards, Vestigo, Gregg, Claypool, Duran and Culley. Edwards testified to seeing Kyle Stefanik sign the petition. Respondent notes that page 2 of G.C. 8 is blank other than the signatures. Based on the testimony of Edwards, Vestigo and Claypool, who signed on page 2, I conclude that the signatories knew what they were signing. Lisa Deby, Sager Quigley, Delia Twadell, Kelsey Stoermann and Carlee Stoermann

with the Union as the exclusive collective-bargaining representative of Respondent's bargaining unit employees at the 75th street store for a period of not less than 1 year. If an understanding is reached, Respondent must sign an agreement concerning the terms and conditions of employment. I recommend a bargaining order because it is necessary to fully remedy the violations in this case for the following reasons:

(1) To vindicate the Section 7 rights of a majority of unit employees who have been denied the benefits of collective bargaining since at least April 8, 2022. It is only by restoring the status quo and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees will be able to fairly assess the effectiveness of the Union in an atmosphere free of the Respondent's unlawful conduct.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes the Respondent's incentives to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by the possibility of a decertification petition or by the prospect of imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a bargaining order.

(3) A cease and desist order without a temporary decertification bar would be inadequate to remedy Respondent's refusal to recognize the Union and refusal to bargain. Given the turnover in the workforce at 75th street, much of it related to Respondent's unfair labor practices, it is problematical as to whether the Union could prevail in another Board election. Assuming that the Union prevailed in a re-run election, Respondent might well file objections to the conduct of the election which would further delay the certification of the Union.

If the Union prevailed in a second election, a remedy without a bargaining order would permit a challenge to the Union's majority status before the taint of Respondent's previous unlawful withdrawal of recognition has dissipated. This is particularly true in light of the turnover at the 75th street store. Much of this turnover is directly related to Respondent's unfair labor practices, including the discharge of 3 pro-union employees during balloting and Respondent's failure to reassure employees that they would receive the same previously promised wage increases as non-union Starbucks employees if they selected union representation.[64] Allowing another challenge to the Union's majority status without a reasonable period for bargaining would be unjust also because the Union needs to re-establish its relationship with unit employees, who have already been without the benefits of union representation for over 6 months.

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testified that they signed authorization cards. While Respondent takes me to task for curtailing their interrogation of these witnesses regarding the authorization cards, there is no legitimate issue regarding majority support for the Union. Indeed, Respondent, if it had a good faith doubt, could have accepted the petition presented to it on March 3, and inquired then and there whether the signatures were authentic since almost everybody who signed G.C. 8 was present.

[64] There is no need to revisit the law on dissemination. Virtually all unit employees were told that whether they received the promised wage increases was up in the air. Additionally, it is hard to believe that employees failed to notice the discharges of Claypool, Vestigo and Doran during the balloting and were unable to glean that these discharges were related to union activity.

The possibility of a decertification petition may likely allow Respondent to profit from its unlawful conduct.

These aforesaid circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of unit employees who continue to oppose union representation.

The Respondent, having discriminatorily discharged Michael Vestigo, Maddie Doran and Alydia Claypool and constructively discharged Hannah McCown (Helverson) must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). Respondent shall compensate them for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings, computed as described above.

Respondent shall file a report with the Regional Director for Region 14 allocating backpay to the appropriate calendar quarters. Respondent shall also compensate Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *AdvoServ of New Jersey,* 363 NLRB No. 143 (2016).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[65]

ORDER (75th street Overland Park, Kansas store)

Respondent, Starbucks , is hereby ordered with respect to its store at 75th Street, Overland Park, Kansas, to

1. Cease and desist from:

(a) Failing and refusing to recognize and bargain in good faith, if requested, with the Union, Chicago and Midwest Regional Joint Board , Workers United, SEIU concerning wages, benefits or other terms and conditions of employment.

(b) Discharging or otherwise discriminating against any employee for engaging in union or other protected concerted activity.

(c) Telling employees that if they select the Union they would not or may not get wages that were previously promised to them .

(d) Telling employees that if they selected union representation that Starbucks would not be able to hire new employees or allow them to transfer to another Starbucks store.

[65] 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.

(e) Telling employees that managers would not be able to assist them with any tasks if they selected union representation.

(f) Calling the police, or having the police called, to disperse employees who are not violating any legal requirement.

(g) Refusing to allow employees to work a schedule that they were allowed to work prior to the filing of a representation petition by the Union.

(h) More strictly enforcing company policies after a representation petition has been filed which had not been enforced as strictly before the petition was filed, with the exception of policies materially affecting the safety of employees or customers.

(i) 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) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of its full-time and regular part-time shift supervisors and baristas at its store at 75th street and I-35 in Overland Park, Kansas.

(b) On request by the Union, rescind any changes in its unit employees' terms and conditions of employment that were unilaterally implemented since February 2, 2022.

(c) Within 14 days from the date of the Board's Order, offer Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(e) Compensate Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) 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 the backpay award to the appropriate calendar years.

(f) Compensate Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(g) Within 14 days from the date of the Board's Order, remove from its files any reference to the discharges of Michael Vestigo, Maddie Doran, Alydia Claypool and constructive discharge of Hannah McCown (Helverson) and Maddie Doran's final written warning and within 3 days thereafter notify Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown in writing that this has been done and that the discharges, McCown's constructive discharge and Doran's final written warning and any reference to them will not be used against them in any way.

(h) Within 14 days after service by the Region, post at its facility at 75th Street in Overland Park, Kansas, copies of the attached notice marked "Appendix A."[66] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, 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 February 2, 2022.

(i) 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 Region attesting to the steps that the Respondent has taken to comply.

ORDER (Country Club Plaza Store)

Respondent, Starbucks, is hereby ordered with respect to its store at Country Club Plaza, Kansas City, Missouri, to

1. Cease and desist from:

(a) threatening employees with stricter enforcement of company policies except those necessary for the safety of employees and customers. Enforcing company policies more strictly after a representation petition has been filed.

(b) Threatening employees that they may not get wage increases that were promised to them before the filing of the Union's representation petition.

(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.

Within 14 days after service by the Region, post at its Country Club Plaza store in Kansas City, Missouri, copies of the attached notice marked "Appendix. B"[67] Copies of the notice,

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66 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."

67 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."

on forms provided by the Regional Director for Region 14 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, 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 January 31, 2022.

ORDER (Lawrence, Kansas store, # 29089 located at 1731 West 23rd Street)

Respondent, Starbucks, is hereby ordered with respect to its store at 1731 West 23rd Street, Lawrence, Kansas to:

1. Cease and desist from

(a) Strictly enforcing rules and policies that it did not strictly enforce prior to the filing of a representation petition.
(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days after service by the Region, post at its , Lawrence, Kansas store, # 29089 located at 1731 West 23rd Street, copies of the attached notice marked "Appendix. C"[68] Copies of the notice, on forms provided by the Regional Director for Region 14 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, 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 March 28, 2022.

68 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."

Dated: Washington, D.C. October 12, 2022

Arthur J. Amchan
Administrative Law Judge

APPENDIX A (TO BE POSTED AT THE 75TH STREET STORE)

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 Fail or refuse to recognize and bargain in good faith, if requested, with the Union, Chicago and Midwest Regional Joint Board , Workers United, SEIU concerning wages, benefits or other terms and conditions of employment.

WE WILL NOT Discharge or otherwise discriminate against any employee for engaging in union or other protected concerted activity.

WE WILL NOT Tell employees that if they select the Union they will not or may not get wages that were previously promised to them

WE WIL NOT Tell employees that if they select union representation that Starbucks would not be able to hire new employees or allow employees to transfer to another Starbucks store.

WE WILL NOT Tell employees that managers will not be able to assist them with any tasks if they select union representation.

WE WILL NOT Call the police, or have the police called, to disperse employees who are not violating any legal requirement.

WE WILL NOT Refuse to allow employees to work a schedule that they were allowed to work prior to the filing of a representation petition by the Union.

WE WILL NOT Enforce more strictly company policies after a representation petition has been filed which had not been strictly enforced before the petition was filed, with the exception of policies materially affecting the safety of employees or customers.

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

WE WILL Recognize and, on request, bargain with the Union
Chicago and Midwest Regional Joint Board , Workers United, SEIU
as the exclusive collective-bargaining representative of its full-time and regular part-time shift supervisors and baristas at the store at 75th street and I-35 in Overland Park, Kansas.

WE WILL On request by the Union, rescind any changes in unit employees' terms and conditions of employment that were unilaterally implemented since February 2, 2022.

WE WILL Within 14 days from the date of the Board's Order, offer Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL Make Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

WE WILL Compensate Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) 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 the backpay award to the appropriate calendar years.

WE WILL Compensate Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown (Helverson) for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the discharges of Michael Vestigo, Maddie Doran, Alydia Claypool and constructive discharge of Hannah McCown (Helverson) and Maddie Doran's final written warning and within 3 days thereafter notify Michael Vestigo, Maddie Doran, Alydia Claypool and Hannah McCown in writing that this has been done and that the discharges, McCown's constructive discharge and Doran's final written warning and any reference to them will not be used against them in any way.

STARBUCKS CORPORATION

(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.

8600 Farley Street, Suite 100, Overland Park, KS 66212-4677
(913) 967-3000, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/14-CA-290968 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, (913) 967-3014.

APPENDIX B (to be posted at the Country Club Plaza store)

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 stricter enforcement of our rules due to your interest in selecting union representation.

WE WILL NOT more strictly enforce our rules, including our dress code, because you have expressed interest in union representation.

WE WILL NOT cast doubt as to whether you will receive wage increases and other benefits previously promised to all Starbucks employees because you have expressed interest in union representation.

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

STARBUCKS CORPORATION
(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.

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APPENDIX C (to be posted at the Lawrence, Kansas store 29089 located at 1731 West 23rd Street.)

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 WILLL NOT Strictly enforce rules and policies that we did not strictly enforce prior to the filing of a representation petition.

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

STARBUCKS CORPORATION
(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.
8600 Farley Street, Suite 100, Overland Park, KS 66212-4677
(913) 967-3000, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/14-CA-290968 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, (913) 967-3014.