UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

STARBUCKS CORPORATION

and	**Cases 19-CA-296356**
	19-CA-296357
	19-CA-297758
WORKERS UNITED LABOR UNION	**19-CA-298551**
INTERNATIONAL A/W SERVICE EMPLOYEES	**19-CA-299574**
INTERNATIONAL UNION	**19-CA-307653**

Ryan E, Connelly, Esq. and
Kristin White, Esq., for the General Counsel.

Jason Stanevich, Esq.; Jeffrey E. Dilger, Esq.,
and *Michael Lovejoy, Esq. (Littler Mendelson P.C.),*
for the Respondent.

Marina Multhaup, Esq. (Barnard Iglitzin & Lavitt LLP),
for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARIEL L. SOTOLONGO, Administrative Law Judge. At issue in this case is whether Respondent Starbucks Corporation (Respondent or the Employer) violated Section 8(a)(1) of the Act by, inter alia, making various coercive statements to employees; by removing union signs and flyers; by creating the impression of surveillance; and by engaging in other similar conduct; whether it violated Section 8(a)(3) & (1) of the Act by discharging employee Artemis Moraine and issuing a disciplinary warning to employee Tom Bosserman because of their union activities; and whether it violated Section 8(a) (5) & (1) of the Act by changing working conditions without bargaining with Workers United Labor Union A/W Service Employees International Union (Union or Charging Party).

I. PROCEDURAL BACKGROUND

Based upon the various charges filed by the Charging Party, and following the issuance of two earlier complaints, the Regional Director for Region 19 of the Board filed a Third consolidated complaint in this matter on February 3, 2023, alleging that Respondent had violated Section(s) 8(a)(1), (3), and (5) of the Act as briefly described above. Respondent

thereafter filed a timely answer to said to said complaint. I presided over a hearing in this matter in Seattle, Washington, on July 18–20, 2023, during which the General Counsel, Respondent, and the Charging Party had the opportunity to examine and cross-examine witnesses, and introduce other evidence.[1]

II. JURISDICTION AND LABOR ORGANIZATION STATUS

The complaint alleges, and Respondent admits, that Respondent is a Washington corporation headquartered in Seattle, Washington, engaged in selling food and beverages at its locations throughout the United States, including at its store # 8740 located at 3635 Broadway, Suite A, Everett, Washington (herein called the store). The complaint further alleges, and Respondent admits, that in conducting its business operations as described above, during the prior 12 months, Respondent derived gross revenues in excess of $500,000, and during the same time period, Respondent purchased and received goods valued in excess of $50,000 directly from points outside the State of Washington. Accordingly, the complaint alleges, Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section(s) 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find that the Union, including each of its joint board affiliates, is a labor organization within the meaning of Section 2(5) of the Act.

III. FINDINGS OF FACTS

A. Background Facts

As briefly touched upon above, the events in question in this case occurred at Respondent's store # 8740, located at 3625 Broadway, Suite A, in Everett, Washington (the store). During the events at issue herein, Ming Liu was the store manager, and Judy Tam was the assistant store manager; Mike Callahan was the district manager, and Jodi Steen was the district manager at an adjacent district, who assisted and substituted for Callahan during a brief absence from duties due to an injury.[2] It is undisputed that on June 9, 2022, after prevailing in an election, the (Charging Party) Union was certified as the collective-bargaining representative of a unit of employees at the store.[3]

[1] At the hearing, the General Counsel withdrew the allegations of Complaint par. 8, which were going to be litigated in a separate proceeding.

[2] In its answer to the complaint, Respondent admitted that Liu, Tam, Callahan and Steen are supervisors and/or agents of Respondent within the meaning of Secs. 2(11) and 2(13) of the Act. The complaint also alleged that Ivan Shelburn was the assistant store manager during some of the events herein, but Respondent denied his supervisory/agent status—and no evidence was introduced to address his status. It would appear that if Shelburn held the same position as Tam, he would also be a statutory supervisor/agent, but based on the testimony and other evidence adduced during the trial, it doesn't appear that he played a role in any of the events alleged in the complaint, so this issue appears to be moot.

[3] The unit is described in the complaint as follows: "All full-time and regular part-time baristas and shift supervisors employed by Respondent at the Store; but excluding all store managers, office clericals, confidential employees, managerial employees, and all other employees, professional employees, and guards and supervisors as defined in the Act."

Based on the testimony and descriptions of the store provided by witnesses for both the General Counsel and Respondent, it is undisputed that the store has two parts, or sections: the "front" of the store, which is the public side of the store, has a seating area for customers, restrooms and an extended counter, behind which the baristas (including shift supervisors) work, preparing food and beverage (primarily coffee, of course) orders for customers. The other, non-public section of the store, accessible only to employees, is called the "back side," containing an office, storage area, refrigerator and freezer, as well as a sink area for washing dishes. There is a security camera on the back side, and on one of the walls is a message board (for lack of a better term) called the "white board," about 2 feet by 3 feet in size, where messages are written with "Sharpie" style felt pens, although at times, as described below, "hardcopy" messages were posted or attached there.[4] It is also undisputed that during most of calendar year 2022, which is when the events alleged in the complaint occurred, Respondent provided employees with access to an application (or App), called the "Crew App," which employees downloaded and installed on their cellphones, which was used to convey messages, either individually or as a group, to/from management and employees, or between employees.

B. The Events Alleged in the Complaint

1. The February 2022 events[5]

Dustin "Tom" Bosserman testified he has worked for Respondent Starbucks for 18 years, and at the store in Everett since June 2019, as a barista trainer. Bosserman was one of the organizers and shop steward for the Charging party Union, which filed a petition to represent the employees at the store on January 31. In early February, after the petition was filed, Bosserman testified, he informed District Manager Mike Callahan and Store Manager Ming Liu that the filing of the petition was not a reflection on their performance as managers, but rather reflected employee concerns about things that were beyond their capacity to affect.

On February 12, Bosserman had a meeting with Callahan and Liu at the store, early in the morning, as a table in the front of the store.[6] At this meeting, Liu presented printed documents about a COVID reporting act and a list of benefits that Starbucks provides to workers. Bosserman noticed that Liu sounded "like he was reading from a script." When Bosserman asked why Liu was showing him the list, Liu told him that as a result of bargaining, employees could potentially lose these benefits in exchange for some other benefits, that they had no idea how it would turn out. Bosserman told Liu that the store employees would have to ratify any contract that the Union proposed, and that he doubted they would feel comfortable approving a contract that would take away many or most of the benefits they had. He asked if Liu was going to tell partners (employees) they could vote and have a choice in these matters. Bosserman recommended that they hold a store meeting to raise their respective points regarding the Union. At this point, Callahan told Bosserman that they could not hold a store meeting due to COVID risk due to the Delta variant. Bosserman challenged this point because the store had held three meetings in summer and fall of 2021, when COVID was also present. When Bosserman asked Liu if he was in favor of the Union, Callahan responded that Liu was free to have any opinion

[4] These messages were typically from/to management to/from employees.
[5] All referenced dates hereafter will be in calendar year 2022, unless otherwise noted.
[6] This event, and the one that followed on February 18, is the subject of the allegations in complaint par. 6(a).

and that upper management did not tell him what to believe or how to communicate to partners. At the end of the meeting, Callahan emphasized that Bosserman should review the list of benefits. (Tr. 108–112).

During his shift on February 18, 2022, a shift supervisor told Bosserman to meet with Callahan and Liu in the same place, at a table in the front of the store. At the meeting, Bosserman was shown a document with a title called "make the right call" with a list of partner resources and hotline numbers. Bosserman was told that he could call these numbers if he felt uncomfortable at work and if he felt he was being unduly pressured to vote for the Union, and it was making him uncomfortable. Callahan asked Bosserman if he had looked at the list of current benefits again, and Bosserman replied that he had and was aware that those benefits could be lost as a result of bargaining, but again repeated that this is something the membership would not approve. Callahan told him that some unionized Canadian Starbucks stores stated in their contract that they did not want nonunion workers to work at their store and their workers to work at other stores, as an example of the consequences of unionization. Bosserman told Callahan that he was not sure why Callahan was bringing up these examples, since their Union was not seeking to do that. According to Bosserman, Callahan then responded: "Starbucks isn't saying this. It's just my opinion. . . Starbucks, the company, could decide on their own that they don't want. . . the union workers, to be working at nonunion stores, or be able to transfer, or nonunion workers to work at union stores, or to be able to transfer. They could do that." When Bosserman asked why Starbucks would do that, Callahan replied that he didn't know, but that it was "their prerogative." He added that Starbucks was like a family, but that the Union was "like a third party" who was breaking up the family. Callahan stated that this was the reason Starbucks was trying to get the district to vote collectively as opposed to the store unionizing, and Bosserman responded that he would be testifying at that (representation case) hearing (Tr. 112–116).[7]

Liu did not testify about these conversations between himself, Callahan and Bosserman. Callahan testified that recalled that he and Liu met with Bosserman at least once in early 2022 to discuss unions. Liu talked to partners about the new COVID systems at the store and updates about benefits, and Callahan sat in on his conversations as his coach. Callahan denied that he advised Bosserman or other partners at the store that they would lose benefits if the Union was selected as a bargaining representative. He stated that management had learned that unionized Starbucks stores in Canada were not allowed to borrow shifts between stores that were not unionized. Liu relayed the facts of these contracts to all partners to ensure they were aware of the risks of bargaining. Callahan also stated that employees at the store could always take or borrow shifts even after the petition was filed (Tr. 570–573).

I credit Bosserman's version of the above conversations, noting that he provided far more details about these conversation that Callahan, who generally denied making any threats about employees losing benefits as a result of unionization, but did not directly and specifically deny what Bosserman testified he said. I note as well that Liu did not address these conversations in his testimony, and that Bosserman's status as a current employee enhances his credibility.

[7] Apparently, one of the issues at the representation case hearing was what the appropriate bargain unit was, with Respondent apparently taking the position that a district-wide unit was the appropriate one—a view that apparently did not prevail, based on the certification of the Union as the representative of the (single) store's employees, as alleged in the complaint.

2. The removal of union flyers[8]

It is undisputed that beginning in May, employees who supported the Union began posting flyers at locations at or close to the store, primarily on a fence that separated the store property from an adjacent property, along the driveway leading to the drive-thru window, and on light poles around the property.[9] The flyers (or posters) displayed the message "Union Busting is Disgusting," and some had a union-related logo on them, as well as a QR code that allowed those who accessed it to sign a petition in support of the employees at the store. It is also undisputed that during the same time period in May, Respondent's managers, namely Liu and Tang, repeatedly removed these flyers, often tearing them down and disposing them in plain view of employees who observed them doing so.[10] Neither Liu nor Tam (the latter who did not testify) deny doing so, and indeed Liu admitted that removed the flyers in a message he posted in the internal "Crew App" that was then accessible to the employees, stating "my intention is clear, do not support the union." (GC Exh. 6; Tr. 122–123.) Moreover, Callahan testified that had directed the store managers to remove those flyers/posters that were posted on Respondent's property, including walls, windows, signage, and speaker box (Tr. 550–551). As described above, however, Respondent's managers not only removed the union flyers/posters that were actually posted on Respondent's property, but on adjacent properties that were not part of Respondent's property as well, including the fence and light poles.[11]

3. The events surrounding the "Whiteboard"[12]

As previously described above, the so-called whiteboard is a message board located on the "back side" or nonpublic portion of the store, in which messages to/from employees and management, or between employees, were posted. It is essentially undisputed that following the removal of the union flyers/posters by management described above, employees started writing pro-union messages on the whiteboard—and that management began removing or erasing these messages, warning employees not to leave such messages on the whiteboard.

Thus, Bosserman testified that soon after management removed the Union flyers/posters as described above, on May 5, then employee Artemis Moraine wrote the message "Union Busting is Disgusting" on the whiteboard. Assistant Store Manager Tam removed the message in short order at Liu's directive, which Liu admitted doing in a Crew App message to employees.[13] About a week later, following another episode of management removing Union flyers/posters from locations around the store (as discussed above), Moraine again wrote "Union

[8] Complaint pars. 6(b), (e) and (i).
[9] Neither the fence nor the light poles were part of Respondent's property. Some flyers were also posted on the outside wall of the store's property, as well as on the drive-through speaker's box.
[10] See, testimony of employees Hannah Gilliatt, Isabella Srey, and Artemis Moraine, whose testimony in that regard was not contradicted nor challenged, and which are thus credited (Tr. 21–28; 58–61; 303).
[11] Callahan testified that he called the City of Everett Code Enforcement office, which informed him that the city does not issue "permits" for signs on city-owned light poles. Nonetheless, that fact does not suggest that managers were somehow "deputized" by the City to remove signs from public property.
[12] These events are covered by the allegations in complaint paragraph(s) 6(c), (d), (f), (g), (h), (k), and (l).
[13] Liu's message, which included a photo of Moraine's whiteboard message, was introduced into evidence as GC Exh. 5.

busting is disgusting" on the whiteboard. Liu erased this message from the whiteboard, and then wrote a message on the whiteboard himself to the effect that the whiteboard was for "partner" communications only and that any "solicitation" would be removed as a violation of Respondent's policy. Bosserman testified that he then wrote a message on the whiteboard right below Liu's, stating that the Union disagreed with Liu's message.[14] Bosserman additionally saw Moraine write multiple pro-union messages on the whiteboard after this, including messages about how union-represented employees typically received higher wages than non-represented employees. Bosserman testified that he observed Liu photograph and erase at least one of Moraine's messages, and overheard him saying "whoever is writing this it's going to get in trouble; it's all on camera." (Tr. 28; 127–128; 130.) Employees Isabella Srey and Hannah Gilliat confirmed Bosserman's testimony regarding Liu's comments about pro-union messages on the whiteboard. Thus, Gilliat testified that she saw Liu take a photo of the "Union Busting is Disgusting" message on the whiteboard and heard him say "I don't know why they continue to do that when they know I can just look at the cameras and see who did it. They are going to get in trouble. I'm sending this to Mike (Callahan)."[15] Srey testified that in mid-May, Liu told her that she (Srey) should tell the person writing the pro-union messages and that "management could check the camera footage to see who was writing on the whiteboard." She posted a comment on the Crew App about what Liu had told her (Tr. 30–37; 61–69; GC Exh. 4).

In her testimony, Moraine confirmed that she had posted pro-union messages on the whiteboard about 5–10 times, as described above. She testified that prior to this, management had never said anything to them about writing on the whiteboard—about what was allowed or not allowed. Sometime in mid-May, Moraine was asked to meet with district managers Mike Callahan and Jodi Steen in the store lobby, and that Callahan told her that writing on the whiteboard was "soliciting," which was not allowed. Moraine disagreed, and pointed out that there had never been any prior communications from management about that. Moraine added that while Callahan claimed there had been such communications, he never produced any evidence of such. Callahan then quoted the mission and values section of the Starbucks "partner guide," and said that if Moraine did not adhere to them Starbucks would "have to think about going in a different direction" with respect to her (Tr. 305–312).

Bosserman, Moraine, Gilliat and Srey all testified that they had never been informed prior to these events about what these rules regarding postings on the white board were. Bosserman further testified that prior to the advent of the pro-union messages on the whiteboard, the whiteboard was used by management and employees to post a variety of messages. For example a manager once posted a "vision statement" akin to " be happy every day," and sometimes humorous messages like "I see dead people," (referring, apparently, to the early morning customers seeking their caffeine fix), were posted--messages that would sometimes remain for weeks (Tr. 93).

I credit the testimony of Bosserman, Moraine, Gilliat, and Srey regarding what Liu said about the pro-union messages on the whiteboard, and the possible consequences for those writing such messages. In that regard I note that their testimony is consistent with each other, and that in

[14] A photo of the whiteboard with both Liu's and Bosserman's messages was introduced into evidence as GC Exh. 8.
[15] The photo that Gilliat took of Liu taking a photo of the whiteboard was introduced into evidence as GC Exh. 3

his testimony Liu never denied or contradicted their testimony. Whether Liu's statements were ultimately unlawful under all the circumstances will be discussed below.

7. The events in Mid-May that resulted in Moraine leaving work early

In the wake of Liu's (and other managers') removal of union flyers/posters that had been posted around and near the store, and in response to Liu's message posted on the Crew App where he admitted removing such flyers (see, GC Exh. 6), Moraine, on May 13, posted a long message on the Crew App. In her message, Moraine in essence compared the impact of management's response to the employees' union campaign to being in an "abusive relationship," like the one she had recently endured in her personal life, and reiterated to Liu that the employees' support for the Union was not a reflection on him personally or the job he was doing as manager.[16] A few days later, Moraine, who was apparently upset because Liu had not replied to her post, approached Liu in the back of the store (where Tam was also present) and asked him if he had read her message. Liu replied that he had not, and then Moraine relayed its content and reassured Liu that the pro-union messages were not a personal attack on him. According to Moraine, Liu was "very dismissive" toward her, asking Tam "Can you believe this?," and suggesting that Moraine was accosting him. Moraine persisted in telling Liu that the union campaign had nothing to do with him, but Liu kept interrupting her and talking over her, reiterating that he did not agree, and saying things like "If I'm doing my job properly, you don't need a union," and "look at all these other things that I'd done for you, " adding "what about what I want?" Liu and Moraine continued to argue back and forth, and started to raise their voices, and Moraine admitted that she became very upset and may have cursed. At this point, Moraine told Liu that she was returning to the floor (the front of the store) to resume working. When Moraine returned to the floor, she testified, she was visibly upset (and likely crying, as discussed below), which prompted Shift Supervisor Killashandra Rose to ask what was wrong, and Moraine told her about her argument with Liu. Rose suggested that Moraine should go home to take care of her mental health, and Moraine agreed and returned to the back of the store to clock out. When she returned, Liu re-engaged with her in the same argument as before, with both raising their voices. Moraine then clocked out, and headed to her car in the parking lot, where she sat and cried (Tr. 312–321).

Killashandra Rose testified that for the past 9 years she worked at the store as shift supervisor.[17] Among her duties as shift lead, Rose would excuse people from work if they needed to leave early, in the case of an emergency or mental health crisis. Rose would ask the employee if they wanted to go home and let them go if they said yes (Tr. 350–353).[18] In her role shift supervisor, Rose testified that excused Moraine from work in mid-May 2022. After sending Moraine on their lunch break, Rose heard Liu and Moraine's raised voices from the back room,

[16] Moraine's message was introduced into evidence as GC Exh. 23.

[17] As noted earlier, shift supervisors are bargaining unit employees, not statutory supervisors.

[18] Rose recalled having or being part of several store conversations about mental health issues. For example, District Manager Callahan spoke about mental health at a store meeting with about 25–30 baristas and shift supervisors between 2020 and 2021. Rose noted that both Callahan and Liu were physically present at the meeting. Rose recalled that the meeting discussed that mental health was important and that if needed, employees could call in and say they needed their shift covered. Rose had a separate conversation with Liu in the back room between 2021 and 2022, in which Liu asked how she was and told her that her mental health was important. Rose was uncertain as to why Liu initiated the conversation (Tr. 353–355).

but could not hear what they were saying. After arguing with Liu for 30 minutes, Moraine came back to the floor asking where to be deployed, looking distraught and crying. When Rose asked Moraine what happened, Moraine told her that she had talked to Liu about a message she had sent on the group chat. Rose then asked Moraine if they wanted to go home, because she believed Rose was really upset and "wasn't doing okay" enough to work on the floor, where she would be facing customers. Rose added that since they were told multiple times that mental health was important and people could leave early, she believed that sending Moraine home was the right thing to do. After the conversation with Moraine, Rose again heard raised voices for another 5 minutes in the back room and noted Moraine then left. Rose then told Liu that she had excused Moraine to go home, and his only response was to say "okay." Two hours later, Rose reiterated to Liu that she had excused Moraine, and he responded the same way without asking any follow-up questions. Rose later learned that Moraine had been terminated due to her leaving early that day. Between the time she excused Moraine to go home in May 2022 and the day Moraine was terminated, Rose testified, she did not have any conversations with any of the store managers and was not asked to provide any statements regarding the day she excused Moraine She confirmed that only until after Moraine was fired, was she told by management that she did not have authority to release employees without the permission of a manager. She stated that during her time working as a barista in other Starbucks stores, she had witnessed instances where a shift supervisor would release an employee to go home—but only in the absence of a manager (Tr. 356–360; 369–371).

Rose provided examples of other times shift supervisors at the store had excused employees to leave early. She recalled that barista Ashley Sorensen was "being a little bit snippy towards customers and fellow baristas" at the store in 2016 or 2017 and was told by the shift supervisor to go home and come back with a better attitude the next day. Rose stated that Sorensen continued to be employed for another year following the incident (Tr. 361). Additionally, Rose recalled an instance in 2020 or 2021 where an employee named Tim (no last name provided) was arguing with the shift supervisor, Rebecca, who told him to go home on the spot. Rose did not think that Tim spoke to any other individuals above the level of shift supervisor because she saw Tim leave immediately after speaking with Rebecca (Tr. 360–363). She added that Tim was not terminated for leaving early. Rose also recalled that she had to leave a shift early in 2019 or 2020 due to distress about her aunt passing away. When Rebecca, her shift lead, asked if she was okay and wanted to go home early, Rose began crying and said that she wanted to. Rose left without speaking to any other individuals that day. The next day, Liu told Rose he understood what happened and offered his condolences. (Tr. 363–364).

Rose stated that she had been a shift supervisor from the end of 2021 to the beginning of 2022. From verbal instructions and a workbook detailing shift supervisor duty, Rose recalled that there were certain circumstances where she was allowed to ask employees if they wanted to leave and release employees during their shift, including if they were sick or "not mentally able to handle working" (Tr. 366). She confirmed that when neither a store manager nor assistant store manager was present, shift supervisors clearly had the authority to excuse individuals. She believed that when either of these individuals were present, she still had the authority to excuse an individual to go home without consulting them because she was the person running the floor and directly interacting with the employees, and Liu told her that she would just have to tell him after (Tr. 365–369).

Liu testified that he was the manager at the Everrett store until April 2023, when he transferred to another store. Regarding the incident involving Moraine in May, Liu testified he recalled that Moraine went to the back room to talk to him for 20–30 minutes. In the back room, another partner, Nate, was asked to leave, while assistant manager Judy Tam stayed for the conversation. According to Liu, Moraine told him that she did not appreciate him removing the union signs and did not feel supported by him as a result. When Liu responded that he was only expressing his opinion, Moraine compared to Starbucks and Liu's treatment of her to her ex-husband. Tam then stepped in and told Moraine that she was being disrespectful to Liu and violating Starbucks' Mission and Values. Liu recalled that Moraine stated, "Fuck this, I'm going home" and left the room. Liu described that Moraine was yelling and her tone was "aggressive… toward [him] as a person." Liu also testified that Moraine used the F-word a few times in the conversation. As Moraine was leaving, Liu told her not to-- and asked if she had someone to cover their shift. Moraine ignored him and clocked out on the iPad front of him. Liu clarified that clocking out entailed inputting a phone number and password and punching out. Liu testified that afterwards, Moraine left the back room and left the store. A few minutes later he and Tam went onto the floor to support the team. Liu stated that in the conversation, Moraine never indicated to him that they had been released to go home and did not reference Killashandra Rose. He recalled that Rose was working on the floor that day and he asked her what she needed help with. He denied that Rose talked to him about Moraine leaving that day. (Tr. 447–460; 461–468).

When asked about the 37th & Broadway policy for excusing an unwell partner from work mid-shift, Liu testified that if was if he was at the store, a shift supervisor was expected to communicate to him that someone was not feeling well and should be sent home. If he was not in the store, the shift supervisor would communicate this information to him through text or call. Liu confirmed that when he was at the store, he had the ultimate authority to release people from their shift, and when he was not at the store, Judy Tam had that authority and had to notify him as well. Liu reiterated that between May 16, 2022, and after Moraine's notice of separation was issued, no shift supervisor notified him that Moraine had been excused from work on the 16th. He added that prior to May 16, Rose had never excused someone from their shift while he was at the store (Tr. 468–471).

In reviewing the testimony of Moraine and Rose, on the one hand, and that of Liu, on the other, I note that the two main differences between them is, first, that both Moraine and Rose testified that after the initial encounter between Moraine and Liu in the back of the store, Moraine returned to the floor in order to resume working, but was then told by Rose to clock out because she emotionally upset and not in the proper frame of mind to continue working. Liu, on the other hand, testified that Moraine announced her intention to leave during their initial encounter. In that regard I credit the testimony of Moraine and Rose, which corroborate each other's version and is consistent in their versions. Moreover, I note that that Assistant Manager Tam, who was present during the encounter between Moraine and Liu, did not testify, I draw an adverse inference from her failure to thus corroborate Liu, and conclude that the sequence of events occurred as Moraine and Rose described. The second significant difference is that Rose testified that she notified Liu, twice, that she had released Moraine to go home, and that Liu acquiesced, whereas Liu denied being so notified. I credit Rose's testimony that she informed

Liu that she had released Moraine to go home, noting that Rose is a current employee whose credibility is enhanced by the fact that she proffered testimony adverse to her employer's interests. I thus conclude that Rose informed Liu that she had authorized Moraine's early departure.

8. The May 18 conversation between Moraine, Callahan, and Steen

Moraine testified that sometime in mid-May, after the episode of her/their leaving work early described immediately above (they) had a conversation with Callahan and Steen at the store. According to Moraine, Callahan, who was accompanied while visiting the store by Steen (who apparently did not say anything during this encounter), told (them) that writing on the whiteboard was "soliciting," which was not allowed. Moraine responded that (they) disagreed, pointing out that there had been no prior communications from management about writing on the whiteboard. Callahan claimed that there had in fact been communications, but never produced evidence to support it, according to Moraine. Callahan then quoted the mission and values section of Starbucks' partner guide, and told Moraine that if (they) did not adhere to them, Starbucks would "have to think about going in a different direction" with (them) (Tr. 305–312).

Callahan and Steen remembered this conversation differently, and testified accordingly. Callahan testified that on May 18 he visited the store with Steen, and spoke to Moraine about the incident a couple of days earlier, about which he had been informed that Moraine had left work in a "disrespectful" manner.[19] According to Callahan, Moraine said that she was frustrated with Liu, with whom she had trouble communicating, and that she did not agree with Starbucks' solicitation policy. Moraine also said that she knew she should not have walked off the job. Callahan asked Moraine what kind of support she needed, and Moraine replied that she just needed to take her (anti-anxiety) medication. Callahan further testified that Moraine did not say anything about having received permission from (shift supervisor) Rose during the conversation. Later that day, Callahan memorialized the meeting with Moraine in an email he sent to Jennifer Durham, a Starbucks "partner resources" specialist.[20] (Tr. 554–560). In her testimony, Steen provided less detail about this meeting than Callahan did, but corroborated Callahan's description of the meeting, particularly in the memo she wrote later that day summarizing what had transpired.[21] Steen, like Callahan, testified that Moraine never mentioned having received permission from Rose to leave work (Tr. 409–410).

In evaluating the credibility of Moraine, Callahan, and Steen regarding their conversation described above, I note that Callahan and Steen provided far more details than did Moraine, and that they both memorialized and summarized this conversation in memos contained in the record. Both Callahan and Steen provided an exact date for this conversation, May 18, whereas Moraine

[19] Callahan indicated he had asked Steen to accompany him to ensure that he was properly representing Starbucks' values in his conversation with Moraine.

[20] This is Respondent's version of the HR department. Callahan's email to Durham was introduced into evidence as R. Exh. 16, and I would note, contains more detail about the conversation with Moraine—who is referred to as "Schneider," in the email, Moraine's married name. Later that day, Callahan testified, he was involved in an automobile accident that put him out of commission for about a month, which as discussed below, resulted in Steen covering for him at various meetings.

[21] This memorandum was introduced into evidence as R. Exh. 6, and describes the meeting in detail. In her memo, Steen also refers to Moraine as "Schneider."

did not, testifying that it occurred sometime in mid-May.[22] Thus, to the extent that their versions of this conversation differ, I credit Callahan and Steen's version (which are consistent with one another) over Moraine's.[23] I further note that while neither Callahan nor Steen deny Moraine's testimony that they warned Moraine that Respondent would "have to think about going in a different direction" with regard to Moraine if she did not adhere to the (whiteboard) rules, I find that this occurred in the context of Moraine telling them that she did not agree with Respondent's whiteboard rules and that therefore would continue to disregard Respondent's directives in that regard.

9. Moraine's discharge on June 14

It is undisputed that Moraine was terminated from her employment by Respondent on June 14. During the course of a meeting with Liu and Steen on that date, Moraine received a "Notice of Separation" form that she signed.[24] Regarding what transpired during the meeting, Moraine testified that Liu appeared very awkward and uncomfortable, reading from notes, and said that she was being terminated for "repeated violations" of Starbucks' attendance policy. Moraine attempted to question Liu's narrative, but was interrupted by Liu, who according to Moraine was not interested in wat she had to say. Steen did not say much, according to Moraine, only stating that she was there to support Liu when Moraine questioned her presence, and to reiterate that she was being terminated for violation of the attendance policy.[25] At the end of the meeting, Moraine was instructed to clock out and leave. After leaving the meeting, Moraine testified that she sat in the lobby of the store for a while crying and trying to collecting herself before driving away. Liu and Steen also testified about their meeting with Moraine on this date, but their accounts of the meeting do not differ in any significant or relevant way from Moraine's account, so I find no need to describe their testimony about this meeting in detail.[26]

Liu testified that he made the decision to terminate Moraine, but consulted with Callahan and Respondent's partner relations department prior to doing so. He explained that he felt compassion for Moraine on account of her being a single mother, because he was raised by a single mother, and did not initially want to terminate her, but that Callahan advised not to let his emotions affect his decision.[27] Regarding the reason for Moraine's termination, Liu testified that

[22] This was 2 days after Moraine had walked off the job, and contrary to Moraine, who testified that nothing was said to (them) about walking off the job until (they) were terminated a month later, as discussed below, both Callahan and Steen testified the topic was discussed, as this is the primary reason they went to so the store to talk to Moraine on that day. This is internally consistent and makes sense, and I thus credit Callahan and Steen's testimony in this regard.

[23] I do not credit, however, the testimony that Moraine admitted she should not have "walked off" the job, which is inconsistent with what she and Rose testified to—which is that Rose excused her to go home. I believe that what Moraine likely said was that she regretted getting upset an raising her voice during her discussion with Liu.

[24] This form was admitted into evidence as R. Exh. 3. The separation notice states that the reason for the termination is Moraine's violation of Respondent's attendance policy, for walking off the job on May 12. The notice also makes reference to an earlier notice regarding leaving work early dated October 13, 2021, as will be discussed below.

[25] As noted earlier, Steen was substituting for Callahan, who was on medical leave as a result of a car accident.

[26] One difference is that Liu testified that he believed that Callahan was present with him that day (Tr. 491–492), but it is clear that it was Steen, as she and Callahan testified (Tr. 409–410; 562), confirming Moraine's testimony.

[27] I note, however, that Callahan testified that *he* and Steen made the decision, although the store manager (Liu) had to "own" it—that is, assume the responsibility (Tr. 562).

Moraine had earlier received a warning for walking off the job on October 4, 2021, when Moraine left work early after an argument with other team members in which she used profanity.[28] Thus, Liu explained, Moraine's walking off the job early on May 16 was a repeat her earlier violation of attendance policy on October 4, 2021, for which she had received an earlier warning. During cross-examination, however, Liu admitted that other employees had repeatedly violated Respondent's attendance policy without incurring similar disciplinary action—that is, discharge. Thus, Liu admitted that barista Belle Contreras had missed three separate scheduled shifts in a 9-day period, for which she only received a "corrective action" coaching form.[29] Likewise, barista Tia Miller missed six scheduled shifts between August and October 2022, for which she only received a "documented coaching," which Liu admitted was the lowest form of disciplinary action.[30] (Tr. 509–517.)

Callahan, who as indicated earlier had testified that he and Steen had made the decision to discharge Moraine (contrary to Liu's testimony), testified that Moraine had walked out of her shift in a "disrespectful" manner, and that he considered Moraines' walk-out's significant impact on partners' and Starbucks' standing.[31] Asked to explain why Moraine was not discharged until about a month after (their) violation of the attendance policy, Callahan testified that Respondent needed to do "due diligence" on the Moraine matter in light of his absence secondary to his absence (Tr. 554–563).

As noted above, there is conflicting testimony from Respondent's witnesses regarding who made the decision to discharge Moraine and the exact reasons therefor, as well as unexplained reasons for the apparent disparate treatment of other employees that engaged in similar conduct. As will be further discussed below, I find this diminishes the credibility of Respondent's witnesses as to this issue, and raises the specter that Moraine may have been discharged for other reasons.

10. The incident between Bosserman and Steen and the invocation of Weingarten

Bosserman testified that on June 21 he was working on the main floor (as an expediter at the drive-through station and register) when he was approached by someone who he did not know at the time, but later learned was Steen. According to Bosserman, Steen said she was there to help and began ringing on his register, assuring him that he would not get in trouble for that. He noticed that Steen did not know how to clear orders at the windows, and told her to help out

[28] The written warning was introduced in the record as R. Exh. 4, dated October 13, 2021. I would note, however, that the focus of the language in the memo is Moraine's raised voice and use of profanity in her conversation with fellow employees, not her leaving early. The memo does not indicate that it is a "Corrective Action," the term typically used by Respondent for written disciplinary actions. I would additionally note, that while Liu testified that he told Moraine, when he gave her the warning to sign, that walking off the job was unacceptable and that it should not happen again, this is not reflected in the October 13 memo. Also admitted into the record was Moraine's written reply to the memo (R. Exh. 5), as well as other employees' written accounts of what transpired on October 4, 2021 (R Exhs. 9; 10; 11).

[29] This corrective action form, dated July 26, 2022, was introduced into evidence as GC Exh. 25, and indicates that Contreras had earlier been warned about failing to show up for scheduled shifts.

[30] Miller's documented coaching form was received in evidence as GC Exh. 26. On at least one of the occasions when Miller failed to show up for work, Liu admitted, she never called in to inform that she did not plan to show up.

[31] This rationale, I note, is not reflected in Moraine's separation notice, which only mentions her walking off her scheduled shift (R. Exh. 3).

Stark (a fellow barista) on the bar. He added, however, that Steen said did not feel comfortable at the bar, so he moved her to the warming station, but said that she kept moving back and forth from there—which seemed confusing to him.[32] Later, Shift Supervisor Stephanie Heinzen asked Bosserman to go wash dishes at the back of the store, where Steen soon joined him. While there, Steen asked him about not having till tags on his register, and about the tension at the store that morning. Bosserman told her that is if she was going to ask him "investigatory questions" with potential for discipline, he wanted a union representative present. Steen denied that she was conducting an investigation, and asked him other questions, which Bosserman refused to answer, invoking his right to union representation every time—about six times altogether, Bosserman testified (Tr. 149–158).[33]

Steen testified that on that date, someone from the store called to ask for her assistance, because Shift Supervisor Heinzen was upset, although Steen could not recall who had called.[34] According to Steen, when she arrived at the store she checked in, asked Heinzen what was happening and how she could help. Heinzen looked visibly upset, according to Steen, and said it had been a "rough" albeit normal morning. Steen said she greeted all the baristas and then went to help at the drive-thru window, where Bosserman was working, both taking orders and at the register. Bosserman told her she could operate (ring) his register, as long as he was not "written up" for it, and Steen agreed. After a few transactions, Bosserman told her she could be more helpful at the "bar," but Steen said she was not skilled in that role. According to Steen, Bosserman then yelled across the floor at Heinzen, saying Steen "didn't know what she was doing" at the bar, and asking her to move Steen somewhere where she could be more helpful. Later that day, Steen talked to Bosserman in the back room about the earlier incident where he had yelled to the other partners (about her alleged lack of skills), because it had made Steen and others feel uncomfortable.[35] Despite her assurances that she was not conducting an investigation, Steen testified, Bosserman asserted his Weingarten rights and refused to talk to her or answer any questions. Steen testified she reported about her interaction with Bosserman to Callahan and the HR department because of its "negative impact on partner and customer experience." (Tr. 410–415.)

I note that while Bosserman's and Steen's account of this encounter are not totally different, there are some notable differences, particularly about what Bosserman said out loud to

[32] Bosserman's testimony and narrative about this incident was difficult to follow at times, because he often got sidetracked, before returning to the main theme.

[33] One of the questions, according to Bosserman, was about his writings on the whiteboard this morning. I do not find this particular testimony credible, for various reasons, some of which will be discussed below. In this particular regard, I note that Steen, who had just arrived at the store, had no way of knowing about what Bosserman had written on the whiteboard that morning. Moreover, this type of "interrogation" would certainly been alleged as a violation in the complaint had the General Counsel been aware of it, in view of the multiple allegations of that nature included in the complaint—but, apparently, the General Counsel had no knowledge of it, despite Bosserman having provided several pre-complaint affidavits. In short, I find that this was an "ad-lib" on his part, which I do not credit.

[34] At the time Steen was filling in for District Manager Callahan, who had been injured in a car accident, as noted above.

[35] During cross-examination, Bosserman admitted that he had yelled out to a fellow Barista, Stark, about Steen's inability to perform duties at the bar, but clarified that Stark was about 6 to 10 feet away at the time.

others about Steen's inability to perform certain functions. I credit Steen's account, which was more detailed and internally consistent.[36]

11. The alleged impression of surveillance

Later on the same day as the encounter he had with Steen, Bosserman testified, while he was on break, he stood outside the store, for about10–15 minutes, and held a sign that said, "Union Busting is Disgusting." According to Bosserman, at some point he observed Liu inside the store, behind the bar, raising his (cell) phone, as if he were taking a photo. Bosserman testified that he did not know for a fact if Liu was taking a photo or video, but that was his "impression." Bosserman did not testify how far away he was from Liu when he observed the above-described event.

12. The alleged changes to the "Crew App"

Very little evidence was proffered regarding the Crew App, other that it (apparently) was a phone application that allowed store management to communicate with employees, and employees with each other. For example, no direct evidence was proffered as to when the use of this application first started, or how it came to be, who paid for it—or any other such useful foundational evidence. The General Counsel introduced multiple exhibits of printed communications between employees and management, and between employees and other employees, that first appeared in the Crew App, which permitted attachments such as photos.[37] These exhibits show back and forth discussions—and sometimes arguments—about employee rights under the Act, such as under *Weingarten*.

Bosserman testified that at some point in late June, Liu announced that the Crew App would be discontinued. No foundational evidence, such as the time, place or manner of this alleged announcement, was elicited or provided (Tr. 161). Bosserman later clarified that Liu was not truly discontinuing the application, but apparently ceasing to be its administrator and ceasing to pay for the premium service, thus preventing future members, such as new hires, to join (Tr. 164).[38] Again, no foundational evidence was provided for this alleged announcement, nor additional evidence that these changes were actually implemented. In short, the evidence regarding the existence, use, and alleged changes to the Crew App, let alone the reasons for such changes, leaves much to be desired.[39]

[36] During the course of Bosserman's testimony, I observed a noticeable shift in his demeanor between his direct examination by counsel for the General Counsel (and Charging Party counsel), and cross-examination by Respondent's counsel. Whereas his demeanor during direct examination was friendly, relaxed, and free-flowing with information, it visibly turned tense, reticent and even combative during cross-examination. This palpable shift in demeanor cannot be explained by the manner of cross examination, which was courteous and not confrontational by any means. Bosserman thus appeared at times to be less than candid while answering questions under cross-examination, and I have taken this into account in determining his over-all credibility.

[37] See, e.g., GC Exhs. 14; 16; 17; 23.

[38] Thus, in a very indirect manner, the record apparently discloses that Respondent—or at least one of its managers and agents, Liu, was paying for this service.

[39] Needless to say, as I will discuss later, the General Counsel fell quite short of meeting its burden of proof with regard to this allegation.

13. The alleged Weingarten violation and threat on June 28

According to Bosserman, following Moraine's termination on June 14, the bargaining unit employees at the store voted to go on strike and did so on June 23–25, returning to work on June 26.[40] Sometime later that day, after he had ended his shift, Bosserman received a text from Liu informing him that he wanted to speak to him on the phone. Bosserman replied that he wanted union representation during the call, and expected to be compensated for the "work-related" conversation. A few hours later, Liu called Bosserman and informed him that on June 28 he and District Manager Callahan would conduct an investigatory interview and that he had the right to union representation. Bosserman asked fellow barista Stark to be his designated representative at this meeting, and he met with her before the meeting to discuss his rights. Stark requested that Liu inform them, prior to the meeting, what it was about, and Liu replied that the investigation concerned Bosserman's "lack of alignment with our mission values, specifically about the way he communicates." (Tr. 164–173.)

On June 28, 2022, Bosserman and Stark met with Callahan and Liu at the store's café table while the store was closed. Callahan reviewed Bosserman's Weingarten rights and allowed him to leave to have a caucus with Stark during the course of the meeting. When asked by Callahan about the company's solicitation policy, Bosserman stated that it prohibited posting in work areas but not break areas, as described in the partner guide. Callahan replied that the entire store was the work area, but said he was not familiar with the language in the partner guide. In the meeting, Bosserman referenced a complaint issued by Region 28 of the NLRB that stated that union information could be posted on a public-facing community board, and argued that this complaint gave strong precedent to post Union-related messages in a noncustomer facing break area in the back room. Callahan stated that the whiteboard was Starbucks' property, and management could decide how to use it. When Bosserman asked why solicitation on bulletin boards in break areas was permitted in roasting plants and at the Seattle support center, Callahan responded that it was above his pay grade and that Bosserman risked discipline, including separation, by continuing to write on the whiteboard. Callahan stated besides legality, the larger issue was Bosserman's disrespectful communication with Liu, and Liu corroborated this point. Callahan stated that Bosserman's continued writing on the whiteboard after Liu told him to stop violated Starbucks' values. Bosserman replied that he felt disrespected that Liu was trying to "infringe upon [his] rights to protected activity" and that he had multiple conversations with Liu to discuss their different opinions about writing on the whiteboard (Tr. 180). At this point Callahan informed Bosserman and Stark that the investigatory portion of the meeting was over, and asked Stark to leave.

After Stark left, Callahan presented a corrective action form to Bosserman.[41] The form detailed his interaction with Steen on June 21, 2022, and Bosserman raised questions about information on the form, such as the characterizations of his behavior as "dismissive and

[40] Upon his return to work, Bosserman testified, the "Whiteboard" was totally covered with paper notices, something that had never happened before (those paper notices where typically posted on the refrigerator), thus not allowing anyone to write any messages on it.

[41] The initial corrective action form handed to Bosserman was admitted into evidence as GC Exh. 18. As discussed below, after Bosserman objected, the corrective action form was further modified as shown by GC Exhs. 19 and 20, with GC Exh. 20 being the final version signed by Bosserman.

disrespectful" when he told her that she could ring on his till as long as he would not be punished for it (Tr. 183). Bosserman told Callahan that he was following company policy and trying to protect himself from claims of violating it. Callahan admitted that he was correct but said that Steen told him that Bosserman's tone was problematic. Bosserman denied this, asking why Steen could not be at the meeting to corroborate her allegations. Callahan told him that Steen was on vacation, but they could not wait to have the corrective action conversation. Bosserman told Callahan that Steen did not mention that he invoked his Weingarten rights six times during their conversation, and never mentioned him disrespecting her or other partners in the conversation. Callahan acknowledged that the complaint seemed to be solely based on Steen's experience and apologized to Bosserman. When Callahan asked Liu if he witnessed any of the interactions in the corrective action, he replied that he was not present for the interaction at the register and could not hear most of the conversation from the back room. Callahan then excused Bosserman to do digital trainings while he talked with Liu. When Bosserman returned five to ten minutes later, Callahan notified him he had talked with Steen, and that she had confirmed Bosserman communicated with her disrespectfully. Callahan presented Bosserman another (revised) corrective action form with an added line of "In a tone that was aggressive and not respectful tone" after "You can ring on my till as long as I don't get written up for it" as shown in GC-19 (Tr. 186). Bosserman read the new corrective action and pointed out that there was no revision regarding the fact that he had invoked his Weingarten rights or her claims about treating partners poorly. He also noted that the date should reflect the date of their meeting due to significant modifications and that Liu's name was on the form even though he did not witness any of the interactions. When Callahan asked Bosserman a question regarding his objections, Bosserman invoked his Weingarten rights, and Callahan rescinded the question. At this point, Bosserman told Callahan that the conversation was clearly still investigatory because based on his answers, Callahan "contacted Jodi, and [he] got further information from her to modify this corrective action" (Tr. 190). Bosserman told Callahan that he had to file an unfair labor practice charge for violating his Weingarten rights, to which Callahan asked for forgiveness and to sign the corrective action. Callahan printed a third (and final) corrective action form with the requested date change, as reflected in GC Exh. 20. Bosserman signed this form and kept the earlier versions of the corrective action (Tr. 174–191).

Callahan briefly testified about this meeting with Bosserman, whereas Liu did not testify about this in his testimony. Callahan testified that he and Liu met with Bosserman on that date to deliver a corrective action form that had been prepared by Steen. He stressed that the meeting was not therefore investigatory in nature, and that he was careful not to ask questions during the meeting. At the time, Callahan emphasized to Bosserman that "the purpose of our conversation was for him to understand the impact of his actions and that he was expected to demonstrate mission values and be respectful to other partners." Callahan testified, however, that Bosserman repeatedly asked questions about the corrective action form he was given, and repeatedly objected to its contents. Callahan wanted to be fair and thus wanted to change some of the language that Bosserman objected to. When Callahan asked a question to understand what Bosserman was saying, Bosserman told him that would leave the conversation if he was refused a Weingarten representative. After that, Callahan did not ask any more questions and Bosserman signed the document. After Bosserman asked questions and requested edits to the initial corrective action form, Callahan made the edits, but Bosserman refused to give back the prior versions (Tr. 566–570).

Bosserman's and Callahan's testimony about what transpired at this meeting is not truly in conflict, and thus I conclude that no credibility resolutions are necessary. I note in that regard, however, that it is undisputed that Callahan asked Bosserman only one question based on Bosserman's repeated objections to the language in the corrective action form, and that he withdrew the question after Bosserman invoked his Weingarten rights. Thus no further information was sought from Bosserman, who was then handed his disciplinary warning.

14. The alleged threats in July[42]

Avery Schilling testified he worked at the store as a barista from February 2021 until February 2023, at which time he transferred to another Starbucks store at the University of Washington. In July 2022, after learning there was a vacancy for a shift supervisor position at the store, he applied for the position. He was interviewed for this position by Marissa Brady, at the time the manager at the Lakewood Crossing store, who had hired him at the Everett store when he started working there.[43] A few days later, on July 8, he and fellow barista Lindsay Hutch spoke with Liu in the lobby of store. Liu asked Schilling how the interview (with Brady) had gone, and Schilling replied that it had gone well, that he had good rapport with Brady. Liu then told Schilling that he expected a shift supervisor to be a strict enforcer of employee policies. He added that things were changing at the store, and that he expected the person he was willing to promote to be a "ruthless enforcer" of policies that they had been lenient about in the past. Liu then said that within 3 months of this "approach toward policy enforcement," that at least half of the staff would either quit or be fired (Tr. 373–377).

Liu did not address this allegation in his testimony, which went undenied, and I thus credit Schilling's testimony.

15. The alleged change in the operation of the headsets

It is undisputed that the baristas who were attending to customers on the drive-through window, and those preparing their orders, wore headsets in order to communicate with the customers and each other. Thus, Gilliatt testified that the headsets at the store had two settings, one for talking to customers at the drive-thru and another to speak to other partners with headsets. The headsets play a distinctive "ding" when a customer arrived at the drive-thru box and only employees who were taking orders at the drive-thru, at drive-thru bar making drive-thru drinks, at warming station, and shift supervisors typically wore headsets. Gilliatt recalled that when she was first employed, she only had to tap the button to be able to communicate, but later someone changed the settings to only allow her to talk while she was holding the button. She explained that this change made her job more difficult because it inhibited multitasking. Neither Liu nor Callahan explained the reason for the change. She clarified that the headset reprogramming only affected communicating to employees and they were still able to communicate with customers at the drive-thru by touching the button once. Regarding the headsets, Gilliatt stated that the ping

[42] Complaint pars. 6(r); 6(s).

[43] It is not clear why the manager of another store would conduct this interview, but this is what Schilling testified. He also testified that Liu was supposed to participate in this interview, but took a nap instead-another mystery that no one sought to clarify.

signaling a customer at the drive-thru was quite loud and confirmed that "You hear it every time." She admitted that store management never told the baristas that they could not communicate using the headsets (Tr. 37–48).

In her testimony, Srey described the headsets at the store as having volume buttons, a button in the middle to speak to employees, and buttons on the sides to talk to customers ordering at the drive-thru box. The headset would make a "ding" noise to alert the employee that a customer was ready to order. Srey recalled that when she first started working at the store, employes would only need to press the middle button once to speak to each other, but around fall of 2022, management wanted them to hold the button to do this. Srey recalled that Liu told her that the change would reduce nonwork conversations and lessen distractions for the employees and Shelburn told her the same. Srey testified that she felt the change made employees' basic job duties more difficult because they could only use one hand. She added that the change was not effective because employees figured out how to change back the settings within a few days (Tr. 69–72). Srey confirmed neither Liu nor Shelburn told the partners that they could not talk to each other using the headsets. She did not recall Liu or Shelburn telling her that they were concerned that customers were being missed at the drive-thru (Tr. 69–84).

Bosserman testified that the headsets were used for communicating with customers ordering at the drive-thru and with partners. He explained that the speaker would press one button to talk to customers and another button to talk to partners. The speakers could be programmed two ways: "hands-free" allowed speakers to touch once to activate the microphone and touch again to deactivate it, and a "push to talk" programming required the speaker to hold the button to communicate. Bosserman explained that the headsets were all hands free and around six to eight people would be wearing headsets at the same time. On October 18, 2022, Bosserman stated that Liu reprogrammed the headsets so that they were "push to talk." Bosserman found out about the change through using the reprogrammed headset, and inquired Liu about the reason for the change. Liu responded that when three people were talking at the same time on the "hands-free" setting, a fourth person could not speak, and that this situation had led to confusion in the past. Bosserman stated that he heard from other partners and Shift Supervisor Fullerton about an incident where Fullerton could not communicate with the other partners due to this situation and yelled at the baristas to not talk at the same time. When asked about the impact of the change in the button system, Bosserman recalled that he told Liu that the fourth person outcome was rare and the "push to talk" system made it difficult for partners to communicate while performing tasks. Bosserman testified having two hands was necessary to do many tasks at once, as was required by his multiple roles at the store. Bosserman testified that the headsets were easy to re-program, and they all returned to the "hands-free" setting in a short time. He added that partners could use them to discuss work- and nonwork-related matters. Bosserman clarified that in the incident with Fullerton and the "hands-free" headsets, Fullerton yelled at one partner that he was unable to talk to them. Bosserman heard this from Fullerton and the partner that was yelled at. He confirmed that Liu changed the headset programming after Fullerton's incident and specified that partners learned how to reprogram the headsets within a couple of weeks (Tr. 192–199; 248–252).

The above-summarized testimony, I find, establishes, first, that headsets are not worn or used by all the employees, but only those involved with taking or processing of orders from

customers on the drive-through window; second, that the system had a limited capacity to handle multiple voices without creating some confusion; third, that Liu changed the system in October 2022 after an incident that caused some confusion among the baristas, and led to yelling by the shift supervisor; and, finally, that employees within a few days were able to re-set (or "hack". . .) the system so that the "hands-free" setting was operational again.

IV. DISCUSSION AND ANALYSIS

As briefly discussed above, the complaint alleges that Respondent committed multiple violations of Section 8(a)(1) of the Act by engaging in conduct, or making statements, of a coercive or threatening nature; that Respondent violated Section 8(a)(3) & (1) of the Act by discharging employee Artemis Moraine and issuing a disciplinary warning to employee Tom Bosserman; and that Respondent violated Section 8(a)(5) & (1) of the Act by changing the working conditions of employees in the bargaining unit, by changing the settings of the headsets used by these employees, without bargaining with the Union.[44] I will discuss the merit of these allegations below.

A. The Alleged Violations of Section 8(a)(1) of the Act

1. The alleged threat to take away existing benefits.[45]

As discussed in the Facts section, I credited Bosserman's testimony that on or about February 18, during a meeting with Liu and Callahan, the latter told him that if the store's employees voted to unionize, Respondent's "prerogative" was to take away their (existing) right to transfer to nonunion stores or have nonunion store employees transfer to their store. It's important to note that Callahan did not phrase this in the context of collective bargaining being a "roll of the dice," where employees could end with greater benefits, lesser benefits, or equal benefits—a description of the potential outcome of collective bargaining that has long been held to be lawful. Rather, Callahan stated that Respondent could unilaterally—as its "prerogative"--chose to do that if employees at the store unionized.

The test as to whether statements are unlawful under section 8(a)(1) of the Act is whether such statement(s) can reasonably be said to interfere with the free exercise of employee rights under the Act, by being threatening or otherwise coercive. If an employee could reasonably interpret or construct a statement as coercive, it matters not what the intent of the speaker was, or whether another reasonable construct of the statement is possible. *Double D Construction Group*, 339 NLRB 303, 303–304 (2003); *Concepts & Designs, Inc.*, 318 NLRB 948, 954 (1995), enfd. 101 F.3d 1243 (8th Cir. 1996); *Saginaw Control & Engineering, Inc.*, 339 NLRB 541 (2003). In applying the above criteria to Callahan's statement, I find it to be coercive and thus unlawful, as alleged in the complaint. Thus, the clear implication of Callahan's statement is that Respondent could retaliate in response to its employees choosing to unionize, which employees could reasonably interpret as a threat.

[44] The changing of the settings of the headsets is also alleged as a violation of Sec. 8(a)(3) & (1) of the Act.
[45] Par. 6(a) of the complaint.

2. The removal of union posters/signs by Respondent.[46]

Several employees testified that on separate occasions in May they observed store manager Liu and/or assistant store manager Tam tear down signs with the message "Union Busting is Disgusting" that had been posted by store employees on properties adjacent to the store. These signs were posted on lampposts, fences and other locations immediately outside Respondent's property, but visible to store employees and customers. I credited this testimony because it was not denied by either Liu or Tam, and indeed Liu admitted doing so.[47] I also find it significant that Liu and Tam did so in plain sight of employees, who not only observed them tear down the signs, but dispose of the signs in the garbage, which I conclude was intended as a message.

The Board has found that removal of union literature posted on public property is in violation of Section 8(a)(1) of the Act. *Orbit Lightspeed Courier Systems, Inc.*, 323 NLRB 380, 393) (1997).[48] Likewise, removal of union picket signs, which I conclude are the functional equivalent of literature or posters, has also been repeatedly found by the Board to violate the Act. See e.g., *Troy Grove, a Division of Riverstone Group*, 371 NLRB No. 138, slip op. at 20 (2022); *Slapco, Inc.*, 315 NLRB 717, 720 (1994); *Muncy Corp.*, 211 NLRB 263, 272 (1974). I also note that although the message of the union signs that were posted were intended to reach third parties, such as customers, the "Union Busting" message was not so disloyal, reckless or maliciously untrue so as to lose the Act's protection. See, e.g., *Mountain Shadows Golf Resort*, 330 NLRB 1238, 1240 (2000).

Accordingly, I conclude that by removing the union signs from property not its own, and by removing the signs in a manner plainly visible to employees, Respondent violated Section (a)(1) of the Act, as alleged in the complaint.

3. The allegations regarding the posting of union messages on the "Whiteboard."[49]

These allegations encompass Respondent's reaction to its employees' posting of pro-union messages in the whiteboard in the back room, and includes the erasure of those messages by Respondent; its directive to its employees not to post such messages, including threats of disciplinary action for doing so; and the creation of the impression of surveillance with regard writing on the whiteboard. As will be discussed below, whether most of Respondent's conduct in this regard was lawful or not, in my view, is dependent on whether Respondent had a right to control the use of the whiteboard.

At the outset, it is important to note that the General Counsel does not content that Respondent's no-solicitation rule or policy regarding the whiteboard was unlawful; it concedes

[46] Complaint par. 6(b) and (e).
[47] Liu so admitted in a message posted on the Crew App, along with the message "My intention is clear, do not support the union." (GC Exh. 6.) I find that this statement—or rather admonishment—is itself coercive and thus unlawful, as alleged in par. 6(i) of the complaint, for the reasons discussed above.
[48] Although some of the signs were posted on private property such as the fence separating Respondent's property from the adjacent property, I conclude Respondent was not privileged to remove them, as it was not their property.
[49] These allegations are those alleged in pars. 6(c); (d); (f); (g); (h); (k); (l); and (q) of the complaint.

that it was a valid rule.[50] Rather, it contends that Respondent did not enforce such rule until the advent of union activity, when pro-union messages started to surface on the whiteboard. It is by now axiomatic that employers can control the use of its bulletin or message boards, and can prohibit any and all postings by employees there, regardless of the nature of the message. What employers cannot lawfully do, however, is to discriminate in choosing which messages to allow. Thus, once an employer allows employee *solicitations* of any type in their bulletin or message boards, it must allow similar solicitations for protected causes, such as on behalf of unions. The applicable standard in deciding if an employer has violated the Act by disallowing certain messages on its bulletin (or message) boards was set by the Board in *Register Guard*, 351 NLRB 1110 (2007), enfd. in part 571 F.3d 53 (D.C. Cir. 2009), where it explains that "discrimination means the unequal treatment of equals," 351 NLRB at 1117. The Board goes on to explain that "unlawful discrimination consists of disparate treatment of activities or communications of a similar character because of their union or other Section 7-protected status." Id. at 1118. This language has repeatedly and traditionally been interpreted to mean that if employers permit employees to solicit for other causes in their bulletin or message boards—with the proverbial "Girl Scout cookies" being a prototypical example—prohibiting solicitations for unions or other protected activities would violate Section 8(a)(1) of the Act. See. e.g., *Mek Arden, LLC v. NLRB*, 755 Fed. Appx. 12, 18 (unpub.) (D.C. Cir. 2018) enfg. 365 NLRB No. 109 (2017). The Board appears not to strictly limit this rule to "solicitations," however, having ruled on multiple occasions that if the employer regularly permits personal and other "non-work" related messages, be they "solicitations" or not, it must also permit messages protected by Section 7, such as union-related messages. See, e.g. *Vons Grocery Co.*, 320 NLRB 53, 55 (1995); *Amelio's*, 307 NLRB 182, 189–190 (1991).

In this case, the only evidence the General Counsel adduced regarding employee use of the whiteboard prior to the advent of union activity—and the writing of pro-union messages there—were two examples: a manager once wrote "be happy every day," (which was described as a "mission statement") and someone once wrote "I see dead people" on the whiteboard.[51] These messages, however, can hardly be classified as "solicitations" (unless solicitating a smile qualifies. . .), nor can be classified as personal or nonwork related messages, within the meaning of such phrases as used in the cases cited. Moreover, there is no evidence that the second message was written by an *employee*, as opposed to a member of management—which controls the use of the whiteboard. There is simply no evidence one way or the other about this, but it is ultimately the General Counsel's burden to establish, by a preponderance of the evidence, that Respondent had a history of allowing employees to ignore the no-solicitation rules by posting solicitations or other nonwork related messages. Nor is there any evidence to support the General Counsel's contention that Respondent had been lax about enforcing its no-solicitation rule prior to the advent of union activity, only to crack down once pro-union messages appeared on the whiteboard. Rather, the evidence suggests that Respondent had not needed to enforce the rule because there had been no prior violations.

Accordingly, and in light of above, I conclude that the General Counsel has not sustained its burden of proof to show that Respondent had allowed prior use of its whiteboard for non-

[50] See, GC Post-hearing br., p. 30.

[51] Tr. 83; 264. The last entry apparently is a humorous reference, using a famous movie line, about half-asleep customers coming in for their early morning caffeine fix.

work-related purposes or solicitations by employees. The only examples proffered of such alleged use were plainly insufficient to meet that burden, for the reasons explained. I therefore find that Respondent acted lawfully by prohibiting its employees from writing or posting pro-union messages on the whiteboard, messages that violated Respondent's valid no-solicitation rule(s). This finding has significant implications for the rest of the allegations regarding the whiteboard. Thus, if Respondent was within its rights to enforce its no-solicitation rule by prohibiting employees from posting pro-union messages there, as I have concluded, it was also acting lawfully by removing such messages, by warning employees of disciplinary action for violating such rule(s), and by informing employees that it was monitoring such violations. Indeed, to conclude otherwise would suggest that engaging in union or other protected activity shields employees from having to obey or otherwise follow valid employer rules, a suggestion I can find no authority for. Accordingly, I recommend that all the allegations regarding the whiteboard be dismissed, to wit, paragraph(s) 6(c); (d);(f); (g); (h); (k) (l); and (q) of the complaint.

4. The allegation that Liu instructed employees not to support the Union.[52]

This allegation concerns the comment that Liu made in the "Crew Chat" App, during the time when he was unlawfully removing pro-union posters and signs from the properties adjacent to the store. In the message on that App, Liu made the following directive: "my intention is clear, do not support the union."[53] As discussed above, the test as to whether statements are unlawful under Section 8(a)(1) of the Act is whether such statement(s) can reasonably be said to interfere with the free exercise of employee rights under the Act, by being threatening or otherwise coercive. If an employee could reasonably interpret or construct a statement as coercive, it matters not what the intent of the speaker was, or whether another reasonable construct of the statement is possible (citations provided above). Liu's comment must be analyzed in the context of the circumstances and events that were occurring at the time, that is, his (and Tam's) unlawful removal of the union signs from adjacent properties. In that context, I conclude that Liu's message was coercive and in violation of Section 8(a)(1). Thus, Liu was doing far more than just expressing his disapproval of unions, something he was probably entitled to do under Section 8(c). Rather, he was *directing* employees not to support the union, silently implying "or else you might be removed just like we removed the union signs." Accordingly, I find that this comment was unlawful, as alleged in the complaint.

5. The allegation that Liu interrogated an employee on or about May 14[54]

This allegation stems from the discussion—indeed, the heated argument—that Moraine and Liu had on (or about) May 14, which resulted in Moraine leaving work early. During that heated argument, in which Moraine was complaining about Liu not responding to her comments (about the Union) posted on the Crew Chat App, and accused Liu of being disrespectful, Liu said, "look at all the things I've done for you," and at one point said, "what about what I want?" The General Counsel alleges this question constituted an unlawful interrogation. I disagree, in view of the overall circumstances. In determining whether an unlawful interrogation has

[52] Complaint par. 6(i).
[53] GC Exh. 6; Tr. 122–123.
[54] Complaint par. 6(i)

occurred, the Board looks at whether under all the circumstances, the interrogation reasonably tends to restrain, coerce, or interfere with the rights guaranteed by the Act. Relevant factors in that determination include: the nature of the information sought; the identity of the questioner; the place and method of the questioning; and the truthfulness of the employee's reply to the questioning. *Rossmore House*, 269 NLRB 1176,1177–1178 (1984), citing *Bourne v. NLRB*, 332 F.2d 47 (2d Cir. 1964); *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985); *Medcare Associates, Inc.*, 330 NLRB 935, 939 (2000). Applying the above criteria to these facts, I conclude that no unlawful interrogation took place in this instance. In the above- described circumstances, I conclude Liu's question was a rhetorical one in response to Moraine's complaints and accusations, not an interrogation that demanded or required an answer. Liu did not ask anything related to Moraine's "union sentiments," as alleged in the complaint. The "question" posed by Liu was not interrogatory in nature, pure and simple. I don't believe that any employee who was behaving in the (fearless) manner Moraine was would have been remotely coerced by Liu's comment or question under those circumstances, just as Moraine wasn't. The General Counsel is applying the test regarding unlawful interrogations in a very rigid and mechanical manner, and failing to examine the circumstances. It is also defining the term "interrogation" in an extremely broad manner, apparently defining it as any sentence with a (?) question mark at the end. Accordingly, I find that this allegation has no merit and recommend that it be dismissed.

6. The allegation that Liu created the impression of surveillance on June 21.[55]

This allegation concerns Bosserman's testimony that on June 21, during his break, he stood outside the store with a sign that said "Union Busting is Disgusting" for about 10–15 minutes. At some point while he was outside the store, Bosserman testified he saw Liu from a distance inside the store raising his (cell) phone, as if he was taking a photo. I note Bosserman did not provide any more details or information than described above. He did not specify, for example, how far away he was from Liu when he observed him, or how far Liu was from the window (or windows) of the store (presumably, since Liu was inside the store and Bosserman was outside, there was at least one window or glass pane between them), or whether he observed a flash from Liu's phone, or how long Liu held his phone up, or whether anyone was near Liu at the time. Quite simply, no additional questions were asked, nor information was provided. Under the circumstances, I am not satisfied that there is enough evidence to find a violation here, given the General Counsel's burden of proof. Accordingly, I recommend that this allegation be dismissed.

7. The allegation regarding the "Crew App."[56]

As discussed in the Facts section, very little evidence, if any, was introduced regarding the operation, ownership, and requirements or rules regarding the Crew App. Apparently, as mentioned above, it was an employer-provided App that allowed management to communicate with employees, and employees with each other. The General Counsel alleges that on June 21 Liu announced that employees would no longer have access to the Crew App—without providing any foundational evidence—and that such announcement violated Section 8(a)(1) of

[55] Complaint par. 6(m)
[56] Par. 6(n) of the complaint.

the Act, presumably because it was somehow threatening and coercive. The record shows, however, that Liu simply announced, on the App (although that is not completely clear), that he would no longer serve as the App's administrator, and would no longer subscribe to its premium service. He made no implicit, let alone explicit, threats when he made this announcement, nor tied his announcement to the union activities of the employees in any way.[57] Employees would, and did, continue to have access to the app, and continued to communicate, but—apparently—new employees, assuming there were any (there is no evidence that there were) could not join the now less-than-premium service.[58] In these circumstances, I simply fail to see how this announcement by Liu could possibly be interpreted to be threatening and/or coercive so as to violate Section 8(a)(1), and therefore recommend that this allegation be dismissed.

8. The allegations concerning *Weingarten* violations[59]

There are two separate incidents in which the General Counsel alleges that Respondent violated employee rights to union representation, otherwise known as *Weingarten* rights, pursuant to the Supreme Court's decision in that seminal case. The first occurred on or about June 21, and involved Steen's attempted discussion with Bosserman in the back room. The second occurred on or about June 28, during a meeting between Bosserman, Callahan and Liu. I will discuss them in that order, but first a brief summary of Board law on this issue.

Pursuant to the well-established doctrine first approved by the Supreme Court in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), employees represented by labor organizations have the right to union representation during meetings employees reasonably believe could result in, or lead to, discipline. In the ensuing years since *Weingarten* issued, the doctrine has been refined by the Board and the courts in response to different factual scenarios that ensued. It is well established, for example, that in order to be entitled to union representation under *Weingarten*, supra, two criteria must be met: First, the interview in question must be an investigatory interview which the employee reasonable believes could result in discipline. Second, the employee must request union representation. *Lennox Industries*, 244 NLRB 607 (1979); *Baton Rouge Water Works Co.*, 246 NLRB 995 (1979); *Kohl's Food Co.*, 249 NLRB 75 (1980). Additionally, it is well-established that employees are not entitled to representation if the purpose of the meeting is only to inform the employee of disciplinary action that has already been decided. *Baton Rouge*, supra. If the meeting is investigatory in nature, however, and the employee requests union representation, the employer must either discontinue the interview or offer the employee the choice of continuing without representation or having no interview at all—with the risk that the employer might lawfully impose discipline based on information gathered from other sources. *Ralphs Grocery Co.*, 361 NLRB 80, 86 (2014).

As discussed more thoroughly in the Facts section, on June 21 Steen, a district manager from an adjacent district who was substituting for an injured Callahan, visited the store after

[57] There are many possible explanations for Liu's decision for no longer wanting to administer the App, none contained or even suggested in the record, but the General Counsel reflexively presumes that it was due to the employees' union activities, and would have me do the same. I decline to make such presumption, reminding the General Counsel that it is its burden to so establish.

[58] Thus, contrary to the General Counsel's assertion, there was no "stifling" of employee communications, as employees continued to communicate via the App, not to mention a myriad of other ways.

[59] Complaint pars. 6(o) and (p).

being called to help out. In Steen's version of events, which I credited, she went to assist Bosserman at his station, and during their interactions, Bosserman acted in manner that she considered curt, if not outright rude, announcing out loud to coworkers that she didn't know what she was doing. A short while later, when they were both in the back room (nonpublic area) of the store, Steen told Bosserman that she wanted to talk to him about what had just occurred. Bosserman, however, immediately invoked his right to a union representative and refused to speak to her without a representative present. Steen assured him this was not an investigatory interview, and asked him another question or two, but Bosserman said he was not going to talk to her and walked away. The General Counsel asserts that Steen's failure to *immediately* cease her attempt to talk to Bosserman, or *immediately* grant his request for union representation violated *Weingarten*.[60] I disagree. In that regard, I note that Steen's informing Bosserman that she wanted to discuss what just occurred in my view did not immediately trigger a reasonable expectation that an investigatory meeting was about to take place, particularly given Steen's follow-up assurance that this was *not* a disciplinary interview.[61] Bosserman refused to answer Steen's questions, and walked away—he wasn't detained in an office or repeatedly accosted with questions until he provided information—he refused to answer Steen's questions and walked away. In these circumstances, and given the relative short duration of their exchange, I find that Bosserman was not denied his rights under *Weingarten*, as alleged by the General Counsel, who appears to view *Weingarten* rights in a very rigid and mechanical manner. Indeed, the next incident perfectly illustrates this point.

On June 28, Liu informed Bosserman that he and Callahan intended to conduct an investigatory interview, and Bosserman was granted the right to have a union representative with his during the interview. Bosserman chose fellow employee Stark, who accompanied him in his meeting with Liu and Callahan later that day, and they were able to caucus outside the presence of the managers during the course of the meeting. After a while, Callahan announced that the investigatory portion of the meeting was over, as they intended to hand Bosserman a disciplinary action, and Stark was dismissed. After Stark left, Callahan presented Bosserman with a "corrective action" form, a written disciplinary warning. This disciplinary action was regarding his treatment of Steen while they were working together on June 21, which had been prepared by Steen. After Bosserman raised multiple objections, alleging that the events described on the corrective action were inaccurate, Callahan, after consulting by phone with Steen, revised the document, twice, in order to accommodate Bosserman, who continued to raise objections. When Callahan handed Bosserman the final revised corrective action, Bosserman again complained that it was inaccurate. At this point, Callahan asked Bosserman to clarify how it was inaccurate, at which time Bosserman invoked his right to union representation, claiming that Callahan was

[60] By "immediately," I mean a fraction of a second, which appears to be what the General Counsel believes the policy requires.

[61] In that regard, I would note that Bosserman appeared to be "trigger happy" in invoking his *Weingarten* rights. A few minutes before his encounter with Steen, fellow employee and bargaining unit member Stephanie Heinzen asked Bosserman about what had just occurred on the floor, and Bosserman refused to talk to *her*, invoking his right to union representation—a role Heinzen herself would have qualified for. While it is true that Heinzen was a "shift supervisor," she was not a statutory supervisor, and there is no evidence that she had "apparent authority" for purposes of disciplinary actions. Apparently, Bosserman believes that any question asked, by *anyone* at work, about his performance, is an event that immediately triggers his right to union representation. While Bosserman's layman misunderstanding of *Weingarten* is understandable, it is a mystery why the General Counsel appears to go along with his views.

conducting an investigatory interview, and informing Callahan that he was going to file a charge because Callahan had violated his *Weingarten* rights. Callahan immediately apologized, withdrew the question, and handed Bosserman the final disciplinary action. The General Counsel argues that when Callahan asked Bosserman to clarify, and in response Bosserman again requested union representation, this somehow "reset" the circumstances, and the meeting again became an investigatory one, leaving Respondent with the option of terminating the meeting, or giving Bosserman the option of continuing the meeting without a union representation. The General Counsel argues Respondent chose neither option, but continued the "interview," thus violating Bosserman's *Weingarten* rights.

The General Counsel is both factually and legally incorrect. Callahan did not "continue" the meeting after Bosserman invoked his *Weingarten* rights—he apologized for asking the one question (which had been prompted by Bosserman's objections), withdrew the question and handed Bosserman the final version of the disciplinary action. This disciplinary action had already been decided upon and was a *fait accompli* after the initial meeting with Bosserman and his representative, Stark, had concluded. Contrary to the General Counsel's contention, the revisions Respondent made in the corrective action form were not the result of questions asked by Callahan, but rather the result of objections Bosserman voiced on his own without being prompted.[62] Indeed, except for the last question at the end, which Callahan withdrew, the only questions asked by Respondent where those directed at *Steen*, who Callahan phoned to verify if Bosserman's claims were valid.[63] Respondent's attempt to accommodate Bosserman's objections by slightly revising the language of the corrective action should not be turned into an "Aha, Gotcha!" trap that instantly converted the meeting into an investigatory one because Respondent asked a single question at the end, or sought clarification of Bosserman's objections. This is a perfect illustration of the General Counsel's rigid and mechanistic application of *Weingarten* rights, one which would render the Board's clarification of those rights, as it explained in *Baton Rouge*, supra., as meaningless.

Accordingly, and in light of the above, I conclude that Respondent did not violate Bosserman's *Weingarten* rights on either June 21 or June 28, and recommend that these allegations of the complaints be dismissed.

9. The allegations about enforcing rules more strictly.[64]

As described in the Facts section, barista Schilling, credibly testified that he had applied and been interviewed for the position of shift supervisor, and that on July 10 Liu told him that he expected the person chosen for this position would be a "strict enforcer" as well as a "ruthless enforcer" of rules that Respondent had been lenient about. Liu added that he expected that within 3 months of this new "approach toward policy enforcement" at least half of the staff would either quit or be fired. The fact that these statements were made by Liu not long after a union campaign that was successful, and in the wake of other statements and conduct that I have

[62] Indeed, at this stage of the meeting, it was Bosserman who was doing the questioning.
[63] It was Steen who wrote and precipitated the corrective action issued to Bosserman, based on her interactions with him on June 21, when she felt he had been disrespectful and rude when she was working alongside him. During this meeting, Callahan also directed one question at Liu, again to verify the accuracy Callahan's claims.
[64] Complaint pars. 6(r) and (s).

found to be coercive and unlawful, makes clear that these statements were intended to convey the message that there was a price to be paid for supporting the union.

An employer may not enforce rules more strictly in response to union activity, or threaten to do so, which I conclude is what Liu did in this instance. *Town & Country Fam. Ctr.*, 219 NLRB 1098, 1108 (1975); *Schrock Cabinet Co.*, 339 NLRB 182, 183 (2003); *St. John's Community Services-New Jersey*, 355 NLRB 414, 415 (2010). Accordingly, I conclude that by making this comments to an employee, Respondent violated Section 8(a)(1), as alleged in the complaint.

B. The alleged violations of Section 8(a)(1) & (3) of the Act.

The complaint alleges that Respondent violated Section 8(a)(1) & (3) of the Act by discharging Artemis Moraine; by issuing a disciplinary warning to Tom Bosserman; and by changing the settings in the headsets. I will discuss these allegations, in that order, below.

1. The discharge of Moraine

As discussed in the Facts Section, Moraine was discharged by Respondent on June 14, almost a month after she had left work midway through her shift after having an argument with Liu. Respondent claims that Moraine's early, unauthorized departure was the precipitating event that led to (their) termination, after having received a warning for similar conduct the prior October (2021). It is undisputed that Moraine left early on (or about) May 16, and that she had also left early in October, and that she had received a warning for that earlier incident. The General Counsel alleges, however, that the real reason for Moraine's termination was her public and unabashed support for the Union. Accordingly, this is a "dual motive" situation, which must be examined under the *Wright Line* analytical framework.[65]

Under *Wright Line*, the General Counsel must demonstrate by a preponderance of the evidence that the employee's protected or union activity was a substantial or motivating factor for the employer's adverse action. *SBM Site Services, LLC*, 367 NLRB No.147, slip op. at 2 (2019). The General Counsel satisfies the initial burden by showing that: (1) the employee engaged in union or other protected activity; (2) the employer had knowledge of the activity; and (3) the employer had animus toward union or other protected activity. Animus can be established through direct evidence or inferred from circumstantial evidence on the record as a whole. *Intertape Polymer Corp*, 372 NLRB No. 133, slip op. 6–7 (2023). Circumstantial evidence of discriminatory motive may include, among other factors, the timing of the action in relation to the union or protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons, offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee. Id. If the General Counsel meets this prima facie burden, the burden of proof shifts to the employer to demonstrate it would have acted the same had the protected or union activity not occurred. *Wright Line*, 251 NLRB at 1089. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must persuade, by a preponderance of the evidence, that the adverse action would have taken place absent the protected or union activity.

[65] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 662F. 2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved by *Transportation Mgmt. Corp.*, 462 U.S. 393, 395 (1983).

Northeast Center for Rehabilitation, 372 NLRB No. 35, slip op. at 1–2 fn. 5 (2022), and cases cited therein. If the employer fails to meet this burden, a violation will be found because a causal relationship exists between the employee's protected activity and the employer's adverse action. *Intertape Polymer Corp*., supra.

In applying the above analytical framework to the facts in this case, I find that the General Counsel has satisfied this burden with regard to Moraine's discharge. Thus, there can be no question that Moraine was engaged in protected activity, and that Respondent was aware of it. Moraine was one of the principal union supporters, often posting pro-union messages both on the whiteboard and the Crew App, messages that management had access to and which little doubt as to who had posted them. Indeed, the incident that precipitated her leaving work early on May 16, which was what Respondent asserts led to her discharge, was caused by an argument she had with Liu regarding pro-union messages she had posted on the whiteboard and in the Crew App. I also find that the record fully supports a finding that Respondent had union animus, based on the various coercive acts engaged in and statements it made, as I discussed earlier. Moreover, as further discussed below, additional circumstantial evidence of animus exists by virtue of the fact that Moraine was treated in a disparate manner. Accordingly, I find that the evidence presented by the General Counsel shifted the burden to Respondent to show that it would have taken the same adverse action against Moraine even in the absence of protected activity.

For the following reasons, I conclude that Respondent did not meet such burden. As briefly described above, Respondent's position is that Moraine was discharged for repeatedly violating its attendance rules—for repeatedly missing work, or more precisely, for leaving work early without authorization. In support of this, Respondent points out that on October 13, 2021, Moraine received a written disciplinary warning for leaving work early (R. Exh. 4). As I pointed out in the Facts section, however, the focus of this warning appears to be Moraine's failure to communicate with "partners and customers with respect and professionalism," and not so much on the fact that she left work early. Indeed, it goes on to warn Moraine that "Failure to uphold our Mission and Values by communicating professionally and respectfully may result in corrective action up to and including separation of employment." Thus, clearly, the principal sin on this occasion was not Moraine's violation of attendance policy by leaving early, but rather the manner she in which she communicated with others. It is only this conduct, not the attendance violation, that drew a warning that future violations of this nature might result in further discipline, including termination. Thus, Respondent's reliance on this earlier warning as justification for her Moraine's discharge for an attendance violation in May is not only flawed, but appears to be pretextual.

Secondly, Respondent's argument that Moraine's early departure on May 16 was unauthorized is highly questionable, in light of Shift Supervisor Killashandra Rose's credited testimony that she authorized Moraine to leave early, because of Moraine's emotionally-distraught state. Rose corroborated Moraine's testimony that she had authorized Moraine to leave, and also testified that she informed Liu, twice.[66] Although shift supervisors are not

[66] Although Liu denied that Rose had so informed him, I credited Rose's testimony over Liu's. In that regard I note that after Rose informed Liu that she had released Moraine to go home, his only reaction was to say "OK," and that she again informed him a while later, and he did not say anything to her that would have indicated that she did not have the authority to do so—until after Moraine had been discharged a month later.

Section 2(11) statutory supervisors, a reasonable argument can be made that at least at this particular store, they had apparent authority to authorize early departures of employees, and thus were Section 2(13) agents of Respondent. With regard to whether an individual acts with apparent authority, the Board stated as follows in *Hausner Hard-Chrome of Kentucky*, 326 NLRB 426, 428 (1998):

> Apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal had authorized the alleged agent to perform the acts in question." *Southern Bag Corp.*, 315 NLRB 725 (1994), and cases there cited. See also *Alliance Rubber Co.*, 286 NLRB 645, 646 (1987). The test is whether, under all the circumstances, employees "would reasonably believe that the employee in question [the alleged agent] was reflecting company policy and speaking and acting for management." *Waterbed World*, 286 NLRB 425, 426–427 (1987). Under Board precedent, an employer may have an employee's statements attributed to it if the employee is 'held out as a conduit for transmitting information [from management] to other employees.' *Debber Electric*, 313 NLRB 1094, 1095 fn. 6 (1994).

In the instant case, the evidence strongly suggests that shift supervisors were viewed as conduits of management information and directives by employees at the store. Shift supervisors, the record shows, assigned work and work-stations to partners, released them to go on break, and assigned work shifts and schedules. Liu testified they were authorized to release employees early provided that neither he nor the assistant store manager were present, but it is unclear if this pre-condition was clearly communicated to shift supervisors and employees. Indeed, this was not communicated to Rose until after Moraine had been discharged. In light of this, when Rose released Moraine to leave early on May 16, there would have been no reason for Moraine to have suspected that she wasn't authorized to do so. I further note that when Rose informed Liu that she had released Moraine to leave early—something she did twice—Liu did not say anything other than "OK," let alone admonish her that this action was unauthorized. In these circumstances, I conclude that Rose acted with apparent authority when she released Moraine to leave early on May 16, and thus that Respondent's assertion that Moraine violated the attendance policy is devoid of merit.[67]

The final and by far the most significant impediment to Respondent's ability to show that it would have discharged Moraine even in the absence of protected activity, however, is the evidence of disparate treatment. Thus, the General Counsel introduced evidence that other employees with multiple absences were not disciplined, let alone discharged. For example, Respondent's records showed that employee Contreras had missed work (by not showing up) three (3) times on a 9-day period, and that employee Miller similarly had six (6) absences between August and October (2022)—and neither was discharged. Indeed, only Miller received a disciplinary action, a "documented coaching," the lowest form of discipline.[68] This is very significant, in light of Liu's admission that a failure to show up for an entire shift (as Contreras and Miller did, repeatedly), without alerting management, causes greater disruption and

[67] In this regard, I also note that Respondent, in particular Callahan, who testified he had made the decision to terminate Moraine (contrary to Liu's testimony), never bothered to investigate whether Rose had released Moraine, as Liu had been informed. This lack of proper investigation also suggests a pretextual motive for Moraine's termination.

[68] GC Exhs. 25; 26.

difficulty than someone leaving mid-shift, as Moraine did.[69] This strong evidence of disparate treatment, standing alone, even ignoring the other flaws in Respondent's justifications for Moraine's discharge, is sufficient for me to conclude that Respondent did not, and cannot, meet its burden under *Wright Line*.

Accordingly, I conclude that the evidence supports a finding that Moraine was discharged for engaging in Union activity, and that such discharge violated Section 8(a)(1) & (3) of the Act.

2. The disciplinary warning issued to Bosserman.

As with Moraine's discharge, the "documented coaching" issued to Bosserman on June 28, based on his interaction with Steen on June 21, calls for a *Wright Line* analysis.[70] There is no question that Bosserman was engaged in Union activity and that Respondent was aware of it. Bosserman was the union shop steward, and held multiple conversations with Callahan and Liu during which he revealed his support for the Union. Like Moraine, he often wrote pro-Union messages on the Crew App and on the whiteboard, and was responsible for posting many of the union posters and flyers that were torn down by management in the vicinity of the store, as previously described. He also stood in front of the store on one occasion holding a sign that said "Union Busting is Disgusting" in plain view of Liu, whom he saw apparently taking a photo of him with his cell phone. For the same reasons as discussed with regard to Moraine above, there is ample evidence of union animus on the part of Respondent, including the discharge of Moraine herself, for the reasons discussed above. Accordingly, I conclude that the General Counsel met its burden under *Wright Line* to show that at least part of the motive for Bosserman's discipline was related to his union activity, shifting the burden to Respondent to show it would have taken the same action in the absence of union activity.

Unlike in the case of Moraine, for the following reasons I conclude that Respondent met its *Wright Line* burden to show that it would have issued Bosserman a disciplinary action even in the absence of his union activity. The "corrective action" issued to Bosserman on June 28 was based on his interactions with Steen when she went to the store to help. According to Steen's testimony, which I credited, Bosserman was curt if not rude toward her from the moment she joined him at his station, and at one point embarrassed her by saying, or at least implying, in a loud manner that was plainly audible to all, that she didn't know what she was doing. Even in his own testimony, Bosserman left no doubt that he didn't welcome, and even resented, Steen's presence that day, and he made no attempt to disguise his feelings at the time. As a visiting district manager from an adjacent district, Steen made a judgment call that Bosserman's attitude was not acceptable, and she attempted to talk to Bosserman about it shortly afterward, only to be rebuffed by Bosserman, who said he would not talk with her without union representation.[71]

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[69] See, Tr. 537–538

[70] As previously discussed in the Facts section, Respondent revised the documented coaching issued to Bosserman twice, based on Bosserman's objections during his meeting with Callahan and Liu on June 28. See GC Exhs. 18; 19; and 20, with GC Exh. 20 being the final version.

[71] I would note that although Bosserman was an active union supporter, as described above, there is no evidence that at the time of their encounter Steen was aware of this, since she was visiting from another district, as discussed above. In fact, Bosserman testified that (at the time) he didn't know who she was, although based on his attitude toward her, he plainly suspected she was a member of management. Accordingly, it is unlikely that Bosserman's union activities played a role in Steen's decision to "call out" his behavior. Indeed, as discussed below, Steen also

Unlike in the case of Moraine, not only is there no evidence of disparate treatment of Bosserman by Respondent (by Steen, in this instance), but indeed there is evidence that another employee, not known to be a union supporter, also received a disciplinary warning from Steen for her conduct that day. That would be Stephanie Heinzen, the shift supervisor, who was "in charge" of the store that morning, and who was issued a "corrective action" for her conduct that day.[72] In these circumstances, the evidence supports a finding that Bosserman's union support did not play a role in Respondent's decision to issue him a disciplinary action, which the evidence suggests would have been issued based on his behavior alone, regardless of his union activity.[73]

Accordingly, I conclude that the allegation that the disciplinary warning issued to Bosserman was unlawful and in violation of Section 8(a)(3) & (1) of the Act lacks merit, and will therefore be dismissed.

3. The changing of the settings of the headsets.

I will be brief, because I do not believe this allegation merits extended discussion or analysis. First, the record lacks evidence suggesting, let alone establishing by the preponderance of the evidence (as is the General Counsel's burden), that Respondent (in this case, Liu), changed the setting of the headsets because of union animus, that is, as "pay back" for the employees' union activities—as suggested by the General Counsel. As testified to by General Counsel's own witness, Bosserman, Liu stated he was changing the settings in the headsets because there was too much cross-talk with everyone talking at once, which had created confusion on at least one occasion. According to Bosserman, this was confirmed by a shift supervisor, Fullerton. There is simply no evidence supporting the allegation that union activity had anything to do with this action.

Secondly, there is no evidence that this relatively small change, which temporarily caused some inconvenience to some employees (those using the headsets), amounted to a truly *adverse* action by the employer, as required under the *Wright Line* analytical framework for an action where there is evidence of a dual motive involved—and there is no evidence of such, as explained above.[74]

Accordingly, there is no merit to this allegation, and it will be dismissed.[75]

"called out" another employee not known to be a union supporter, shift supervisor Stephanie Heinzen, for her behavior that day.

[72] See, R Exh. 7 This corrective action form mentions Heinzen's failure to answer questions from Steen, as well as her failure to "deploy, or manage, other team members that day, a reference to Bosserman's conduct on that day. Steen testified that she was responsible for this corrective action issue to Heinzen, whom Steen testified was allowing Bosserman to do whatever he pleased.

[73] I also note that Bosserman had been issued disciplinary warnings before, prior to any union activity, for his behavior and attitude. See, R. Exhs., 1; 2.

[74] The evidence shows the employees soon figured out how to re-set the settings to a hands-free mode, and everything went back to square one.

[75] I am afraid that this is yet another example of what appears to be, regretfully, an increasing tendency by the General Counsel as of late to automatically view any and all statements or acts by employers, after the advent of

C. The alleged violation of Section 8(a)(1) & (5) of the Act[76]

There is only one allegation that involves the duty to bargain under Section 8(a)(5), the alleged reprogramming of the headsets, as described immediately above. As with that allegation, I will be brief.

The General Counsel alleges that Respondent violated the Act by changing the "hands-free" settings on the headsets in October without bargaining with the Union, which had been certified as the collective bargain representative of the unit employees in July. It is by now axiomatic that Section 8(a)(5) of the Act requires an employer to provide its employees' representative with notice and an opportunity to bargain before instituting changes in any matter that that constitutes a mandatory subject of bargaining, such as wages, hours, and other terms and conditions of employment. *NLRB v. Katz*, 369 U.S. 736 (1962). A unilateral change in a mandatory subject of bargaining is unlawful *only*, however, if it is a "material, substantial, and significant change." *Berkshire Nursing Home*, 345 NLRB 220 (2005); *Toledo Blade*, 343 NLRB 384 (2004); *Flambeau Airmold Corp.*, 334 NLRB 165 (2001), quoting *Alamo Cement Co.*, 281 NLRB 737, 738 (1986), modified on other grounds 337 NLRB 1025 (2002).

I find that this change was not material, substantial, or significant. It was de minimis, and temporary, resulting in a short-lived inconvenience to some of the employees who now had to press a button in order to chime in when others were talking.[77] Contrary to the General Counsel's allegations, it did not "limit" the ability of employees to talk to each other while at work. They could still do so, ad nauseum, by pressing a button, and were soon able to so again hands-free, when they figured out how to re-change the settings.[78]

This allegation has no merit, and will be dismissed.

CONCLUSIONS OF LAW

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

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

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

   (a) Threatening to take away existing benefits if the employees supported the Union;

union activity, as unlawful. It appears that no statement is too inconsequential, no act too trivial or small, to escape the attention of a hammer that views everything in its limited universe as a nail.

[76] Complaint pars. 9 (a) through (d); 12.

[77] As previously pointed out, within a few days the employees figured out a way to re-set the headsets to their original settings, once again permitting them to speak without the need to press a button.

[78] Or, they could remove their headsets and communicate the way humans have done for thousands of years, without any tragic consequences. At the risk of repeating myself, see footnote 75, above.

(b) Removing union posters and signs from properties not its own;

(c) Instructing or directing employees not to support the Union;

(d) Threatening to enforce its rules more strictly in response to union activity;

4. Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Artemis Moraine because of her support for the Union.

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

6. Respondent did not violate the Act in any other manner.

REMEDY

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

The Respondent having discriminatorily discharged Artemis Moraine, it must offer her full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed; and make her whole for any losses of earnings and other benefits suffered as a result of her discharge. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), enf. denied on other grounds, 647 F.3d 1137 (D.C. Cir. 2011). Pursuant to *Thryv, Inc.*, 372 NLRB No. 22 (2022), I further order that the Respondent compensate Moraine for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful conduct. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above .

In addition, the Respondent shall compensate Moraine for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years. *Advoserv of New Jersey, Inc.*, 363 NLRB 1324 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014). Respondent shall compensate Moraine for her search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable next backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above. In addition to the backpay-allocation report, the Employer shall file with the Regional Director copies of Moraine's corresponding W-

2 forms reflecting the backpay awards. *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021).[79]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[80]

ORDER

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

1. Cease and desist from

   (a) Discharging or otherwise discriminating against employees because of their support for the Union;

   (b) Threatening to take away existing benefits if the employees supported the Union;

   (c) Removing union posters and signs from properties not its own;

   (d) Threatening to enforce its rules more strictly in response to union activity;

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

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

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

(b) Make Moraine 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.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful final warning and discharge of Moraine and within three days thereafter notify her in writing that this has been done and that the final warning and discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records

[79] In the Complaint, and its post-hearing brief, the General Counsel requests a variety of special remedies, including, inter alia, a notice reading by high-ranked managers, letters of apology, training for Respondent's supervisors and managers about Section 7 rights, postings of explanation of employee rights next to the Board Notices, and the extension of the bargaining obligation under *Marc-Jac Poultry*, 136 NLRB 785 (1962). The General Counsel has not provided any factual or legal arguments to justify these special remedies, however, nor do the violations of the Act I found in this case warrant them, in my view. Accordingly, I am declining to order such remedies.

[80] 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.

and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Superior, Colorado, copies of the attached notice marked "Appendix."[81] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper noticer, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If during the pendency of these proceedings, the Respondent has gone out of business or closed its Everett, Washington facility, 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 18, 2022.

(f) 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.

The complaint is dismissed insofar as it alleges violations of the Act that I have not specifically found.

Dated, Washington D.C. February 28, 2024

Ariel L. Sotolongo
Administrative Law Judge

[81] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

In recognition of these rights, we hereby notify employees that:

WE WILL NOT discharge you or otherwise discriminate against you for supporting Workers United Labor Union A/W Service Employees International Union (Union).

WE WILL NOT threaten to take away existing benefits if you support the Union.

WE WILL NOT remove Union posters and signs from properties not our own.

WE WILL NOT threaten to enforce rules more strictly in response to our employees' union activities.

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

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

WE WILL make Moraine whole for any loss of earnings and other benefits suffered as result of our discrimination against her, in the manner set forth in the remedy section of this decision.

WE WILL remove from our files any reference to our unlawful final written warning or separation notice to Moraine, and within 3 days notify Moraine in writing that this has been done and that such warning or notice will not be used against her in any way.

STARBUCKS CORPORATION
(Employer)

Dated _____ By _____
(Representative)

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.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 19-CA-296356 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, (206) 220-6284.