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

STARBUCKS CORPORATION

and

WORKERS UNITED a/w SERVICE EMPLOYEES INTERNATIONAL UNION

Cases 04-CA-294636
04-CA-300569 and
04-CA-301648

*David G. Rodriguez* and *Nicholas Allen, Esqs.,*
for the General Counsel
*Nina K. Markey, Alexa Laborda Nelson, Tara Param,*
and *Bridget Devlin, Esqs. (Littler Mendelson, P.C.),*
Philadelphia, PA, for the Respondent
*Alyssa Garcia, Esq, (Barnard, Glitzin and Lavitt, LLP)*
Seattle, WA, for the Charging Party

# DECISION

## STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania during six days of witness testimony between March 20 and March 31, 2023. The hearing concluded virtually via videoconference on April 5, 2023, at which time the record closed without additional testimony. This proceeding involves timely filed charges by the Charging Party, Workers United a/w/ Service Employees International Union (the Union) alleging unfair labor practices by the Starbucks Corporation (the Respondent) at six Philadelphia locations: 3401 Walnut Street (34th and Walnut); 1945 Callowhill Street (Callowhill Store); 600 South 9th Street (9th and South); 1900 Market Street (20th and Market); 3400 Civic Center Boulevard (Penn Medicine); and 1128 Walnut Street (12th and Walnut).

The first complaint, in Case 04-CA-294636, issued on September 21, 2022,[1] alleges that the Respondent: (1) threatened employees with the loss of benefits, including the ability to transfer to other stores and to fill in for employees, if they selected the Union as their collective-bargaining representative at the six stores on numerous occasions between February 17 and May 3; (2) threatened an employee at the Penn Medicine with denial of future wage increases if employees selected the Union as their collective-bargaining representative on May 5; (3) coerced employees into attending captive audience meetings at the six stores on numerous occasions between February 16 and May 11; (4) in retaliation for employees' Union activities, began enforcing its dress code policy more strictly since April 14 or 15 at 34th and Walnut, since mid-February at 20th and

[1] All dates refer to 2022 unless otherwise stated.

Market, since early April at 9th and South, and since April 13 at 12th and Walnut. The Respondent filed an answer to the first complaint on October 5 denying the central allegations and raising numerous affirmative defenses.

The consolidated complaint in Cases 04-CA-301569 and 04-CA-301648 (the complaint) as issued on January 23, 2023 and amended on March 3, 2023, alleges that the Respondent: (1) maintained an unlawfully broad civility rule called "How We Communicate;" (2) told an employee at the 20th and Market Store that they were not entitled to Union representation during investigatory meetings; (3) constructively discharged 34th and Walnut Store employee Alexandra Chabrak in retaliation for her Union activities; (4) reduced the hours of operation of the 34th and Walnut Store between May 9 and September 11, and changed the hours there on July 18, August 15, August 22 and 28, and September 5 in retaliation for employees' Union activities, and with regard to the changes in hours between July 18 and September 5, unilaterally implemented those changes without notice to the Union and an opportunity to bargain; (5) discharged 20th and Market employee Alexandra Rosa in retaliation for her Union activities and other protected concerted activities; (6) in discharging Rosa, applied the "How We Communicate" policy to conduct that implicates the concerns of Section 7 of the Act and to restrict employees in the exercise of protected concerted activities; and (7) imposed discretionary discipline on Rosa by discharging her without notice to the Union and without affording the Union an opportunity to bargain over the disciplinary decision. On February 6, 2023, the Respondent answered the consolidated complaint denying the central allegations and raising numerous affirmative defenses.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party, and Respondent, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Seattle, Washington and various locations throughout the United States, including in Philadelphia, Pennsylvania, has been engaged in the retail operations of stores offering coffee and quick-service food. Annually, the Respondent, in conducting its business operations, derives gross revenues in excess of $500,000, and purchases and receives at each of its Philadelphia facilities products, goods, and materials valued in excess of $5,000 directly from points outside the Commonwealth of Pennsylvania. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *A. The Respondent's Operations*

The Respondent operates over 9,000 retail locations across the United States and has approximately 200,000 employees, which it refers to as partners. Each store is staffed with a manager, shift supervisors and baristas. Some stores have assistant store managers. Shift

supervisors are "keyholders," and are responsible for the shifts they supervise. Shift supervisors and baristas are statutory employees under the Act.

The Philadelphia market is part of the Respondent's Area 147, which is managed by Regional Director Doro Ba. Area 147 extends from Philadelphia to Baltimore, Maryland and consists of four districts. Each district is managed by a district manager who reports to the regional director. Each of the four districts has approximately seven stores, for a total of 28 in the Philadelphia market. The six stores at issue (the six stores) are identified in the Respondent's system by the following store numbers: 20th and Market—8846; Callowhill—7636; 9th and South—9536; 34th and Walnut—775; Penn Medicine—2584; and 12th and Walnut—10407.

The Respondent's Quick Reference Guide provides store managers with the process for determining a store's hours of operation:

> Determining appropriate hours of operation is crucial to the success of the store. Modifying store operating hours based on customer demand can improve a store's profitability. Store hours may need to be changed temporarily for holidays.
>
> **Store Hour Changes**
> Work with your district manager if a change is needed.
>
> **Short term changes**
> Short Term changes in store hours such as holiday adjustments and renovations schedules need to be approved by the district manager.
> The district manager is responsible for updating Store Attributes within IMS at least 21 days in advance of the schedule change. If a change is needed within the 21-day window, the district manager should work with the logistics services representative to determine feasibility.
> Short Term changes in Store Hours should be communicated to customers using appropriate signage one week prior to change when possible.
>
> **Long term changes**
> Long Term changes in Store Hours such as season changes or adjustments to meet business demand need to be approved by the district manager. The district manager is responsible for updating Store Attributes within IMS at least 21 days in advance of the schedule change.
> Prior to the change, the district manager should work with the Logistics Services Representative to ensure there will be no changes needed to delivery dates or windows.
> The DM and store manager should work together to notify impacted vendors if necessary.
> Long Term changes in Store Hours should be communicated to customers using appropriate sign age one week prior to the change when possible.
> Ensure posted store hours reflect the current operating schedule.

Contact FCC for assistance in reprogramming automated lighting control if needed.[2]

*B. Policies and Procedures*

When hired, employees are given the Respondent's Partner Guide – U.S. Store Edition (the Partner Guide) and required to sign and acknowledge its receipt and awareness of its contents. Applicable provisions include the following:[3]

1. Transfers (p. 14)[4]

Transfers "are subject to district manager approval, and are contingent upon business needs, partner availability and partner performance. . . Ultimately, permission for a partner transfer is at the discretion of the store manager and/or district manager. . .. At all times, [the Respondent] retains sole discretion in determining whether [an employee] will be transferred."

2. Work Hours and Schedule. (p. 15)

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

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

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

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

[2] District Manager Juan Rivera testified that the policy requiring that changes to operating hours be updated in IMS at least 21 days in advance was modified in February or March 2020 to 24 hours in advance via companywide email or weekly update. (R. Exh. 31; Tr. 822-826, 879-881.) However, such a document was not produced and Rivera was uncertain as to the form of that communication ("I don't know exactly how it was communicated"). Accordingly, I grant the General Counsel's request for an adverse inference that no such evidence existed. *Bay Metal Cabinets*, 302 NLRB 152, 178-179 (1991). As such, while the district manager was permitted to sidestep the 21-day requirement for short-term changes, no such exception exists for long-term changes to operating hours.

[3] GC Exh. 72 at 2.

[4] Parenthetical page reference correspond to the pages in the Partner Guide.

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

The Respondent's scheduling rules and availability forms for the six stores are signed, acknowledged, and tailored to comply with Philadelphia's requirements.[5]

3. Base Pay (p. 19)

Employees are compensated at a base pay rate and "are periodically eligible for base pay increases." In addition to base pay changes due to "promotion, demotion or transfer to a different pay structure, . . . pay changes may be made to place the [employee's] pay appropriately within the pay range for the job.

4. Prohibition Against Harassment (pp. 22-25)

Pertinent portions of the anti-harassment includes "conduct that creates an intimidating, disrespectful, degrading, offensive, or hostile working environment.." Harassment includes sexual harassment and bullying. Employees who engage in such conduct are "subject to disciplinary action, up to and including separation from employment." Specific examples of "harassing conduct" include: "degrading comments, epithets, slurs," and "letters, emails, text messages, or social media posts that could offend individuals in a particular group, such as references to racial or ethnic stereotypes or caricatures."

Bullying is defined as "unwanted aggressive or abusive behavior characterized by verbal, physical, social or psychological intimidation that is typically repetitive and involves an imbalance of power. Bullying does not have to be based on a protected classification to violate this policy.' Examples of bullying include "patently offensive, demeaning and harmful derogatory remarks, insults or epithets," and verbal conduct "that is threatening, intimidating or obscene."

Upon receipt of a complaint alleging a violation of the respectful workplace policies, "a prompt, thorough and objective investigation" is to be conducted. The Respondent "will reach reasonable conclusions based on the information gathered during the investigation." Employees who violate the "respectful workplace policies following an investigation will be subject to disciplinary action, up to and including separation from employment."

5. Attendance and Punctuality (p. 27)

Reporting to work "when scheduled and on time is essential" to store operations and the "[f]ailure to abide by this policy may result in corrective action, up to and including separation from employment. Some examples of failure to follow this policy include irregular attendance,

[5] R. Exh. 26-30.

one or more instances of failing to provide advance notice of an absence or late arrival, or one or more instances of tardiness.'

6. Illness Policy (p. 28)

"A partner who is experiencing symptoms such as vomiting, diarrhea, jaundice, sore throat with fever, or a medically diagnosed communicable disease must notify the manager. The manager will determine whether work restrictions apply."

In addition to the Partner Guide, the Respondent's food safety manual provides additional standards and procedures instructing employees, shift supervisors, and managers on how to respond when they or another employee experience any of a set of described symptoms at work. Under that policy, an employee experiencing vomiting may not work until 24 hours after their symptoms end. In such situations, the following additional standards apply to shift supervisors:

> Watch for signs that partners may be ill, but have not reported symptoms. Tactfully and privately question partners that show signs that they may be ill. Signs that a partner might be experiencing symptoms include severe cough or runny nose, exhaustion, frequent trips to the restroom, jaundice (yellowing of skin or eyes).
>
> Execute and uphold partner exclusion or restriction requirements as defined below and directed by [store manager] or [assistant store manager].
>
> Ensure that no personal details of partner symptoms/illness are shared with other store partners or customers.

In the case of an employee who is vomiting, the employee is to be excluded and allowed to return after 24 without symptoms. The additional standards do not, however, provide guidance on what to do if a supervisor believes an employee is feigning illness.[6]

7. Dress Code and Personal Appearance (pp. 28-31)

In addition to being distributed during employee orientation, the Dress Code and Personal Appearance Policy (the dress code) is posted in the back of the Respondent's stores and can be accessed on the Partner Hub.[7] The dress code states that employees "who come to work inappropriately dressed or with unacceptable appearance may not be permitted to start their shifts. Failure to adhere to the Dress Code Policy may result in corrective action, including separation from employment."

The dress code provides specifics requirements relating items such as aprons, shirts, pants, hats, footwear, hairstyles, and pins. With respect to shirts, sweaters, and jackets:

[6] R. Exh. 6.

[7] While not all employees recalled reviewing the dress code at orientation, it is undisputed that they were all provided with the Partner Guide and that it is posted in stores. (Tr. 913-914, 964; R Ex. 13.)

Shirts must be clean, wrinkle-free, and in a style appropriate for food service that allows freedom of movement but does not present a safety hazard. Shirts must cover the mid-section when arms are raised. Sleeves must cover the armpits. Sweatshirts and hooded shirts are not acceptable.

Shirts may have a small manufacturer's logo, but must not have other logos, writings or graphics. The base shirt color must be within the color palette (black, gray, navy blue, brown, khaki or white). These same colors may be the base color for a subdued, muted pattern. Starbucks-issued promotional shirts may be worn for events or when still relevant for product marketing.

Solid-color sweaters or jackets within the color palette may be worn. Other than a small manufacturer's logo, outerwear must not have logos or writings.

While working, employees must wear a standard-issue green apron, which are provided by the company. Employees are allowed to wear tops within the permissible color palette, with "a small manufacturer's logo" but not with any other "logos, writings, or graphics." Aprons must be removed "while on a rest or meal period, while in the restroom, or while removing or taking out the trash." In addition, employees may wear "one reasonably sized and placed button or pin that identifies a particular labor organization or a partner's support for that organization, except if it interferes with safety or threatens to harm customer relations or otherwise unreasonably interferes with Starbucks public image. Pins must be securely fastened. Partners are not permitted to wear buttons or pins that advocate a political, religious or personal issue."

Permissible hats include company hats with logos or visors, plain baseball caps, beanies, short-brimmed hats, secured head covering. Except for white, colors must fall within the color palette. Shoes or boots fall under the same color palette requirements but may have a small amount of accent color.

8. Social Media (pp. 35-36)

When using social media, partners must follow Starbucks *Social Media Guidelines*, available on the Partner Hub. Partners are responsible for what they communicate in social media. Any conduct that adversely affects a partner's job performance or the performance of other partners, or adversely affects customers or others associated with Starbucks, or Starbucks legitimate business interests, may be subject to corrective action, up to and including separation from employment.

Generally, partners must:

Be open about working for Starbucks and not represent themselves as a Starbucks spokesperson. Use statements such as, "I'm a Starbucks partner and these are my personal opinions, not necessarily the view of the company…" or "The postings on this site are my own and do not necessarily reflect the views of Starbucks."

Be honest and accurate when distributing information or news about Starbucks products and services.

Not use an image, statement or anything else that's protected by copyright laws.

Respect the privacy of personal information; partners must not share sensitive or personal information about customers or other partners.

Only distribute Starbucks information that has been made public. Partners must not distribute internal, confidential or private company information, including future promotional activities, trade secrets, store performance, internal reports, policies, procedures, suppliers or licensees.

Not engage in online commentary that violates Starbucks policies and standards.

Be aware that Starbucks may request removal of social posts that violate our *Global Social Media Standard* or other Starbucks policies.

Not use a Starbucks-issued email address to register a personal account.

Not respond to media requests. Partners must direct contact from the media to Starbucks Media Relations at press@starbucks.com.

*Workplace*: This platform is made available by Starbucks for partner collaboration and social engagement. Depending upon partner role, use of Workplace may be required or it may be voluntary. Partners who are given access must use the application in a manner consistent with the Workplace Use Standard on the Partner Hub.
If Workplace is accessed when not working or on a break, and is used purely for social engagement, the time is not considered working time and the partner will not be paid. If using Workplace to perform work or engage in work-related activities, or as required, use should occur while the partner is at work (and on the clock). A nonexempt partner who feels the need to access Workplace to perform work when not working on a scheduled shift should consult the manager and obtain advance approval, and must record the time worked in the store's Punch Communication Log.

*Note: Nothing in the company's social media policies should be interpreted to interfere with, restrain or prevent partner communications regarding wages, hours or other terms and conditions of employment or any other protected concerted activity. Partners have the right to engage in or refrain from such activities in exercise of their rights under the National Labor Relations Act.*

9. How We Communicate (p. 43)

The Respondent's "How We Communicate" Policy states: "Partners are expected to communicate with other partners and customers in a professional and respectful manner at all times. The use of vulgar or profane language is not acceptable."

10. Corrective Action

Corrective action communicates to the partner that performance problems exist or that the partner is engaging in unacceptable behavior. The intent of corrective action is to give the partner a reasonable opportunity to re-establish an acceptable level of performance or behavior.

Corrective action may take the form of a verbal warning, a written warning, demotion, suspension or separation from employment. The form of corrective action taken will depend on the seriousness of the situation and the surrounding circumstances. The evaluation of the seriousness of the infraction and the form of the corrective action taken will be within the sole discretion of Starbucks. There is no guarantee that a partner will receive a minimum number of warnings prior to separation from employment or that corrective action will occur in any set manner or order.

In cases of serious misconduct, immediate separation from employment may be warranted. Examples of serious misconduct include, but are not limited to:

Violation of safety and/or security rules.
Theft or misuse of company property or assets.
Falsification or misrepresentation of any company document.
Violation of Starbucks drug and alcohol policy.
Possession of or use of firearms or other weapons on company property.
Harassment or abusive behavior toward partners, customers or vendors.
Violence or threatened violence.
Insubordination (refusal or repeated failure to follow directions).
Violation of any other company policy.

*B. The Organizing Campaign*

The Union filed petitions for election and a mix of mail ballot and manual elections were held at the six stores between January and May. The Callowhill and 9th and South stores filed representation petitions on January 28. They were followed by 34th and Walnut on February 4, 20th and Market on February 4, Penn Medicine on March 7, and 12th and Walnut on April 13.

On February 16, Ba communicated the Respondent's initial response to the organizing campaign to its Philadelphia area employees:

Hi partners,

Hope you are doing well. We know things are busy but wanted to check in as a market given the Workers United petitions that we received at our four of our Philadelphia stores. We want to let you know that today we're asking the National Labor Relations Board (NLRB) to expand the vote to all baristas and shift supervisors in the Philadelphia Market, versus just the four stores.

> Here's why: Our market stores are interconnected - we borrow partners to fill shifts, we transfer and promote between stores, we share inventory, and we work together every day to bring the Starbucks experience to life in this market. We know many of you value this flexibility and our ability to support one another across stores and across the market. When a union comes between us, that can all change.
>
> We strongly believe that ALL our partners should have their voice heard in anything that could impact our Starbucks experience. **If all baristas and shift supervisors vote, and vote together, it will make this process fair and respectful for everyone. <u>It will ensure you all have a say.</u>** (emphasis in original)
>
> We have also asked the NLRB to recognize that our assistant store managers are part of our management team and therefore are not eligible to vote because they are supervisors under the National Labor Relations Act (NLRA). This is like the position taking in other markets regarding assistant store managers.
>
> We will keep you informed as we know more from the NLRB. We will also host regular connects so we can learn more together. You deserve facts and will hear from us directly. We will always be open with you—ask us anything. And if we don't know the answer, we will go find it.
>
> It is our sincere hope that as this process unfolds, you will see why the direct relationship we have as partners matters, and why we don't need the Workers United union between us. We're not perfect, but we want to keep working together to create the partner experience you deserve, and one you can feel proud of. That is our top priority.
>
> Thank you for all you do! We'll be in touch soon. If you need anything in the meantime, just reach out. We're here to help.

Thereafter, the district managers and store managers held mandatory pre-election meetings at the six stores regarding the election and collective bargaining process. However, if an employee could not attend a meeting or left a meeting early there were no consequences.[8]

During the pre-election meetings at most of the stores, Rivera and Fable distributed a "Bargaining Updates" flyer (Bargaining Updates), a four-page document with three parts. On March 9, Rivera sent a work chat message to two store managers stating, "Just sent you both a 4

[8] Contrary to the testimony of Rivera and several store managers, the circumstances strongly suggest that the pre-election meetings were mandatory. Employees were not told they would experience adverse consequences if they missed or were unavailable to meet with management; nor did they suffer such consequences. Those considerations, however, are outweighed by the consistent, credible and undisputed witness testimony that they reasonably believed the meetings were mandatory because: (1) employees saw them posted on their daily work schedules or were told that the store manager would meet with them individually to share any information missed at the group meeting; and (2) employees were paid to attend. Additionally, Rivera or one of his store managers would meet with employees who did not attend at another time about the election and the collective-bargaining process (Tr. 211-216, 218, 280, 323, 478-479, 483, 485, 696-699, 1072, 818-820; GC Exh. 76.)

page doc [sic] that includes the questions and answers from our meetings last week along with additional information to prepare for our meetings this week. Please take a look in email."[9]

The first part consists of one page with "bargaining outcome" facts about Respondent's unionized store in Canada.[10] This section highlights that the Canada store received a one-time raise in its three-year contract "that just barely covered union dues," and that the collective bargaining agreement for the store forbids employees from borrowing partners or picking up shifts at other stores. The second part contains a list of nine questions and answers (FAQs) about negotiations in Buffalo, New York. Among these are the following two FAQs:

> **Are there any proposals about how the store operates?** Yes, Starbucks proposed a clause to ensure the company decides how stores are staffed, when partners are scheduled, when stores are open/closed, who is assigned to which stations, etc.
>
> **I heard Starbucks proposed that Elmwood Ave. Store partners cannot work in other stores?** Yes, Starbucks proposed language that Elmwood Ave. Store partners "will work exclusively at the Elmwood Ave. Store." They cannot pick-up shifts at other stores and partners from other stores cannot work in the Elmwood Ave. Store. This is because Workers United wanted single store voting, partners voted for Workers United at this single store, and we are negotiating a single store contract with its own terms.

The third part of the Bargaining Updates consists of two pages of excerpts highlighting proposals made by the Respondent during the Buffalo negotiations. The first is a broad management rights proposal that would give the Respondent the right to make unilateral changes to many of its employees' core terms and conditions of employment, including: staffing levels; schedules; overtime; discipline and discharge; job duties and job descriptions; layoffs and recall rights; store closures; promotions and transfers; elimination of bargaining unit positions; and, as a catch-all, the Respondent would be free to "take such measures as the Company may deem necessary for the orderly, efficient and profitable operations of the business"[13] The second proposal seeks to preclude represented stores from borrowing partners from other stores and unit employees picking up shifts at other stores.[11]

The Board certified the Union as the collective-bargaining representative for employees at 12th and South on June 29. The other five stores—Callowhill, Penn Medicine, 9th and South, 20th and Market, and 34th and Walnut—were certified on June 3.

### C. *Callowhill*

[9] While Respondent produced the "Bargaining Updates" flyer in one of its many supplemental, rolling productions, it did not produce the email referenced in this message.

[10] GC Exh. 4.

[11] Although not alleged as a violation, the General Counsel notes that the Respondent's management rights proposal in Buffalo is indicative of bad faith bargaining. *Regency Service Carts, Inc*., 345 NLRB 761, 675 (1989); *Hydrotherm, Inc*., 302 NLRB 990, 994 (1991) (employer's broad management-rights rights proposal that would make futile any grievance over a discharge and almost every other aspect of wages and working conditions was evidence of bad faith).

After Callowhill employees filed their petition on January 28, District Manager Mike Rose and Store Manager Michelle Conway held mandatory meetings with small groups of employees in the store lobby. Conway informed employees about the meetings in advance but did not indicate they would suffer consequences if they failed to attend. The store was closed for the meetings. Although the meetings only lasted about one to one and a half hours—less than a full shift—employees were sent home afterwards and paid for their entire shifts.

1. March 2

The first set of meetings were held on March 2. The first meeting that day was with opening shift employees Colter Chatriand, Padilla Reid, and Kiana Jones. Rose started the meeting by stating that he and Conway did not consent to anyone recording the meeting because they wanted employees to speak freely. Rose further stated that, in the absence of consent, it would be illegal under Pennsylvania law to record the meeting. He then told Chatriand, who opened his notebook to take notes, that notetaking was also not permitted. After Chatriand disagreed, Rose said he was not going to argue with him, and Chatriand proceeded to take notes.[12]

During the meeting, Rose and Conway stated the importance of working as a family and having a direct relationship between management and the employees. Rose stressed that bringing in the Union would not be helpful. He added that voting for the Union would prevent management from working directly with employees because it would bring in a third party to act as a middleman between management and employees. Rose cited the example of a Canadian store that unionized and asserted that employees were unlikely to gain economically because they would start negotiations at "ground zero." In such instances, Rose said that employees could gain some benefits and lose others. He also asserted that unionization would result in the loss of opportunities to pick up shifts at nonunion stores if employees brought in the Union. Nor were employees from other stores able to pick up shifts there. Rose then asked each employee individually about the importance of being able to pick up shifts at other stores. After the employees acknowledged the importance of being able to make more income by picking up shifts at other stores, Rose replied that such opportunities would no longer be available if they unionized and would alienate them from employees at other stores.[13]

[12] I based the findings regarding the first three Callowhill pre-election meetings attended by Chatriand, a current employee, on his credible and undisputed testimony, as clarified and corroborated by his spontaneous notes of "key phrases" uttered by Rose and Conway at those meetings. (Tr. 273-312; GC Exh. 26.) The General Counsel requested an adverse inference be drawn based on the Respondent's failure to call Conway or Rose as witnesses. I decline to draw such an inference as there no indication in the record whether either individual is still employed by the Respondent and, thus, within its control.

[13] Chatriand testified that Rose stated at the March 12 meeting that "economic gains were unlikely" and bargaining would start from "ground zero" if employees unionized. (Tr. 283-285.) However, Chatriand's notes, which I also found to be reliable, indicate that Rose made those statements at the March 2 meeting. (Tr. 277-285; GC Exh. 26 at 2, 4.)

2. March 12

The second set of meetings took place on March 12. The opening shift employees consisted of Chatriand, Nicole Frazier, and Porcelain Rodriguez. Rose opened again by announcing that he and Conway did not consent to being recorded. Chatriand replied that there was nothing illegal about taking notes. Rose replied that he knew that was Chatriand instructed by the Union to take notes. Chatriand denied that claim.

During this meeting, Rose stressed the importance of voting in the representation election. He then asked the employees individually how much they thought employees at the unionized Canadian store made in comparison to their nonunion counterparts. Chatriand responded that he did not know because it involved a different country and union. Rose replied that the unionized employees made a dollar or two more, barely enough to cover the union dues.

3. March 19

The third set of meetings were conducted on March 19. The opening shift employees consisted of Chatriand, Frazier, and Lily Prendergast. During this meeting, Rose and Conway provided information about the Union's organizational structure.

4. March 26

On March 26, Conway and the new district manager, Albert Millan, briefly met with Callowhill employees for a final pre-election meeting. After Millan introduced himself, the managers provided the employees with a brochure listing all the company benefits currently available to them.

*D. 9th and South*

9th and South employees filed their petition on January 28.[14] In early Summer 2021, Maura Dengel began dual managing 9th and South along and 12th and Walnut. In February, Dengel shifted over to manage 9th and South full-time. Thereafter, Dengel and District Manager Les Fable usually met with employees on a weekly basis in the store lobby. The meetings were scheduled to take place during work time and the store was closed for some meetings. Some employees could not or did not want to participate in meetings and there were no consequences if they failed to attend. As with other store managers, Dengel used the meetings to talk to employees about the Union and election process, and to answer questions.[15]

1. March 2

Madeleine Levans, a shift supervisor, also began working at 9th and South in the summer of 2021. On March 1, Dengel informed Levans that she was scheduled to attend a pre-election meeting during her shift the next day. Although her meeting was scheduled at the start of her shift

[14] GC Exh. 30(a).

[15] Dengel and Levans provided mostly consistent testimony, but most of the findings regarding 9th and South are based on Levans credible and more detailed testimony. (Tr. 477-479, 483, 696-699.)

at 3 p.m., Levans arrived around 9:30 a.m. to do schoolwork. When she arrived, Fable told her the store was closing for a meeting. Levans asked if she could stay to do schoolwork and, if not, attend the meeting. Fable declined and told Levans to leave and return at her scheduled time. Levans confirmed with Dengel before leaving and by text later that day that she was scheduled to attend the 3 p.m. meeting.[16]

Levans and one other employee, Kai Soulivong, were present at the 3 p.m. meeting with Fable, Dengel, and Assistant Store Manager Michael Misenko. Dengel started by saying that she politically aligned herself with unions but did not feel it was right for the company. Fable urged employees to get the facts before voting. Fable and Misenko then spoke about the uncertainties in collective bargaining, stating that the outcome could result in employees gaining, losing, or keeping current benefits. They likened such uncertainties to those one would encounter in a casino. Dengel asserted that employee communications with management would change if the store unionized. She cited the example of an unhappy employee filing a grievance if the store manager complimented another employee's pants but not theirs. Levans raised issues about the pay scale and tenure. Explaining that she made significantly more than other shift supervisors who had been there much longer than her, Levan asked for clarification of the pay scale. Fable replied by asking if Levans felt she was getting paid too much. Levans replied "no" but insisted that her coworkers were getting paid too little. The managers concluded by mentioning the unionized Canadian store as a reason not to bring in the Union. They did not, however, provide any details.[17]

2. March 9

Levans attended her second pre-election meeting on March 9, along with five other shift supervisors— Amanda Kindler, Jeremy Lannen, Francis Bjornby Kramer, and Kelly Trefz. That day, Levans showed up to work and, to her surprise, the store was closing for a meeting. During the meeting, Fable, Dengel, and Misenko handed the employees a brochure outlining the Respondent's employee benefits. Kramer brought up the issue of food waste and suggested donating the food to a charity. Levans raised the issue of masks and the Respondent's decision to follow CDC's COVID guidelines making the wearing of masks discretionary.[18]

3. March 16

On March 16, the Respondent held the third set of pre-election meetings. Employees were assigned to specific meetings and the store remained open. During these meetings, employees were handed the Bargaining Updates.[19]

[16] GC Exh. 18.

[17] Levans' credible version of this meeting was undisputed. (Tr. 483-486.)

[18] Levans conceded on cross-examination that the Union was not mentioned at this meeting. (Tr. 513.) However, it is evident that management was following up on its statements at the March 2 meeting by detailing all the benefits that it said would be subjected to the uncertainties of bargaining. (Tr. 487-490.)

[19] Levans could not remember who informed her about the meeting, where it was held, what was discussed, or who else attended. (Tr. 489-490.)

4. March 23

On March 23, Levans learned from the daily coverage report (DCR) that employees were scheduled for meetings throughout the day. During this meeting, Dengel was accompanied by a regional hiring manager. No other employees were present at Levans' meeting. After some discussion regarding Levans' college program, Dengel gave Levans a handout about the Union structure. Levans replied that she already decided how she was going to vote in the election and would not change her mind. Dengel responded that Levans had a talent for making these meetings short. Levans then returned to the floor.[20]

5. April 6

On April 6, Levans learned after arriving for her shift that she was scheduled to attend her fifth pre-election meeting. During that meeting, she met individually with Fable and Dengel and Fable in the back of the store. They handed Levans the Bargaining Updates and asked her to review it. After reading the materials, Levans wrote some notes and then told the managers it felt predatory for them to present "cherry picked" legal information that would intimidate someone who was not familiar with such documentation. Fable replied, "okay," and she returned to the floor. Thereafter, the managers asked Levans to send employees back to meet with them at different times.

6. Dress Code Enforcement

Over the course of her five years managing other stores, Dengel periodically reviewed the dress code with employees based on safety concerns. In one instance at 12th and Market, she coached Maddie Barton, a barista, to refrain from wearing tight, thin pants due to the risk of burns from hot coffee. On April 13, 2021, Dengel presented a written warning to Barton and another barista, Bailey Clark, for violating the dress code and the "How We Communicate" policies. She had been inclined to issue a documented coaching because the two employees had been gossiping about her. However, after consulting with Fable, she was instructed to issue the written warnings.[21]

During her tenure at 9th and South, Dengel spoke to employees on a few occasions about the dress code. Consistent with her past practice, Dengel focused on safety. For example, she once told an employee who was wearing crocs without socks to wear safer shoes next time. Nevertheless, employees consistently wore clothing and jewelry that did not comply with the dress code. Prior to the organizing campaign, Levans violated the code on an almost daily basis by wearing long earrings, stack necklaces, gaudy Halloween-themed socks, and graphic t-shirts. She also wore her apron low enough that the graphics on her shirt were visible—all without Dengel's objection.[22]

---

[20] Levans' recollection of the last two meetings was not disputed. (Tr. 490-495).

[21] Over the General Counsel's objection, I admitted unsigned written warnings prepared by Dengel and shown to Barton and Clark on April 9, 2021, subject to the weight given. Considering that the actions varied significantly from Dengel's customary informal approach in dealing with the dress code, I find that she issued the discipline because the employees were gossiping about her. (R. Exh. 18, 18a; Tr. 668-683.)

[22] Dengel testified that she had employees review the dress code "roughly a handful of times" over her five years as a manager at 9th and South and the previous stores that she managed. She did it in instances

In April, for the first time, Dengel met with employees in the back of the store for level sets regarding the dress code. During her meeting with Dengel, Levans asked if the meeting was related to the organizing campaign. Dengel replied that "it's just time that we all check back in with this," handed Levans a copy of the policy, and made her sign and acknowledge the level set meeting in the DCR. Subsequently, in mid-April, Dengel coached Levans by instructing her to pull up her apron to cover the graphics displaying the Union logo. Around the same time, other employees also stopped wearing Union pins.[23]

*E. 34th and Walnut*

On February 3, the day before filing their representation petition, 34th and Market employees published a "Dear Kevin" letter on the Union's Twitter page explaining why they were interested in organizing. The letter was unsigned.[24] One month after that petition was filed, Rivera and Store Manager Jonah Pettinato began holding weekly pre-election group meetings on Wednesdays in the upstairs seating area of the store. Employees were assigned to attend during specific two-hour blocks. Those who failed to attend or left the meetings early were not disciplined. However, if an employee was unable to attend or was not scheduled to work, Pettinato would meet with them one-on-one later in the week.[25]

1. March 2

The store closed early for the meetings on March 2. In the first meeting, Rivera and Pettinato met with employees Shana Low, Sofia Gaines, Brianna Rio, and Yakim Lamb Johnson. Rivera introduced himself and started with his standard introduction—reminding employees about the company's non-retaliation policy and informing them that it would be illegal to record the meeting under state law because he did not consent.

Addressing the representation petition and the Union, Rivera urged employees to vote in the election, the date for which was yet to be determined. Rivera spoke at length about the Union's structure and the consequences of union membership. Specifically, Rivera asserted that there were very few guarantees if employees unionized. If that happened, he guaranteed that employees would have to pay union dues. Also, the relationship between Rivera, Pettinato and the employees would change. Rivera explained that the Respondent values the direct relationship between employees and management. If employees unionized, however, Rivera claimed they would lose

---

where "there was a general pattern in the store of maybe forgetting an apron or hat, or seeing an overall pattern of dress code kind of falling off of what the standard was, I would do essentially like - - a store level set." At 9th and South, Dengel conversed with employees about the dress code but never had "a formal sit down" or "any level of documentation or corrective action delivered." (Tr. 657-663.) In any event, Dengel did not refute Levans' very credible and detailed testimony regarding the consistent violations of the dress and jewelry codes by 9th and South employees, and her failure to enforce those policies prior to April. (Tr. 495-506; GC Exh. 19.)

[23] Dengel failed to provide a detailed, meaningful explanation as to why she chose to suddenly begin enforcing all dress code violations, including those unrelated to health and safety. (Tr. 500-504, 658-659; GC Exh. 5.)

[24] GC Exh. 21.

[25] Pettinato did not dispute Barista Shana Low's credible testimony that the meetings were mandatory: "they were going to be, like, scheduled, so it would be treated the same as a shift essentially." (Tr. 323.)

that direct relationship and would have to go through the Union regarding any issues. Low asked for examples of what would change, and Rivera mentioned an incident where a customer attacked an employee, and the manager quickly called the police to remove the customer removed from the store. Without further explanation, Rivera said that if employees unionized, such a situation might have been handled differently. Rivera then spoke about the unionized Canadian store and asserted that its employees were paid less than the market rate for stores in the surrounding area. Low requested more details about the Canadian store's contract. Rivera replied that he would search for the answers and get back to them.[26]

2. March 9

On March 9, the store closed early for the pre-election meetings. Rivera and Pettinato met with Low, Marty Lardani, and one other employee. They handed the employees current benefits pamphlets, went through them in detail, and presented a video sharing the same information. They reiterated that nothing except for union dues would be guaranteed in negotiations and the employees' direct relationship with management would change. Describing the uncertainties in bargaining, Rivera or Pettinato gave the example of a shopping bag full of employee benefits that would be dumped on a table and employees would have to negotiate for the benefits that they wanted to put back in the bag. Examples included current benefits such as college tuition benefits, free car ride sharing, and supplemental insurance for gender affirming care that might be traded away for more vacation time or pay. Rivera then provided details about the unionized Canadian store's contract. He said that their contract was for a term of three years and prevented employees from picking up shifts at other stores or borrowing employees from other stores. Rivera noted that the Canadian store's contract permitted the store manager to work on the floor but claimed that the store was understaffed because no one wanted to work at a store where hourly wages were lower by $.50 to $.75 compared to other company stores in the area.

3. March 16

On March 16, the store closed early for the pre-election meetings. Rivera and Pettinato met with Low, Lardani, Cole Neal, and Brianna Rio. Rivera reported the results of representation elections at the Respondent's stores in Buffalo, New York. Noting that employees in the Buffalo stores that did not vote were bound by the results of those elections, he urged everyone to vote. The managers then distributed handouts with a flow chart of the Union's organizational structure, excerpts of its constitution, and the bargaining process. Rivera explained that those provisions would bind the store's employees to decisions made at the bargaining table by those chosen to represent them. However, for certain actions—like strikes—employees would still have a vote. In the case of a storewide vote to go on strike, Rivera stated that store employees who defied such a directive could be disciplined by the Union. He also asserted that strikes could last a while and employees could lose pay and health insurance.

4. March 23

[26] I based these findings on Low's credible and detailed testimony over Rivera's general denial that he told employees they would be unable to transfer, borrow, or pick up shifts at other stores. (Tr. 322-338, 822.) Rivera provided no testimony regarding his statements at specific store meetings.

On March 23, Rivera and Pettinato met with employees Low, Neal, Chantel West, and Michaela Burrell. In response to a question about the ability to transfer to or pick up shifts at other stores—a point Rivera raised previously about the unionized Canadian store—Rivera stated transfers would be possible. However, he asserted that it was unlikely that the store's employees would be able to continue picking up shifts at nonunion stores. Nor was it likely that the store would be able to borrow employees from nonunion stores because of Philadelphia's Fair Work Week ordinance, which would prevent employees in Philadelphia stores from taking shifts at stores outside Philadelphia. He referred to the process as complicated but did not explain why union affiliation would make picking up shifts at nonunion stores too complicated.[27]

5. Dress Code Enforcement

Pettinato was hired in March 2021.[28] He was initially trained at two other stores before assuming the management of 34th and Walnut in late June 2021. During his periodic visits to the store, Rivera provided Pettinato with feedback. Rivera noted several issues that were not up to standard, including the dress code, cleanliness, and employee interaction with customers. With respect to the dress code, Rivera would tell Pettinato that certain items worn by employees were out of compliance—e.g., hats, aprons, logos, and or unsafe items. Pettinato, however, declined to strictly enforce the policy and spoke to employees only about items that posed a health or safety risk, including potentially offensive clothing.[29] Among his concerns were

[27] I based these findings on Low's credible, detailed, and corroborated testimony regarding Rivera's statements at the meeting. (Tr. 339-344.) Rivera flat general denials that he made such statements, on the other hand, were hardly convincing and contrary to the weight of the evidence—his concession that he discussed the issues of transfers, picking up shifts, and borrowing employees at several stores, that those existing opportunities "could be something down the road that could change, but it would be something that would be negotiated in collective bargaining," the Bargaining Updates, and Ba's February 16 email warning employees that they might lose the ability to pick up shifts at other stores if their stores unionized. (Tr. 822; GC Exhs. 4, 55.)

[28] Subpoenaed by the General Counsel, Pettinato was clearly reluctant to testify against his former employer, especially Rivera, who was present during his testimony. (Tr. 859.) He rarely made eye contact and was fidgety and flustered when confronted with prior sworn statement— "I remember giving this statement, and the wording that I said is, I believe that's what it was. But to word it as, like, I was denied authorization to hire, like I just -- I want to help do the right thing, but I can't just have my words twisted." (Tr. 606.) On cross-examination, Pettinato attempted to lessen the impact of his sworn statement by blaming it on being "pressured to sign the statement." When asked to explain, he attributed "the pressures coming from a great deal of my own or not - - not having knowledge on this legal process, and the fact that it seemed like if I didn't - - so like, I just want to clarify. Like, I - - was able to skim through it." Then asked whether he had "changed some any of his statements," Pettinato said, "No, not changed them. No. I - - no - - I . . . I said the things in this document, but there was other things I said too that, that were important to me that I - - I - - I just wish I - - I had made a bigger deal about. That's all." (Tr. 614, 617-622.)

[29] Pettinato did not specify what actions he took to enforce the dress code during his first five months managing the store. However, Low credibly testified that in September and October, he enforced the dress code in two instances relating to potentially offensive clothing. (Tr. 344-346.) In any event, I credit Rivera's undisputed testimony that he saw improvements in the fall of 2021 at 34th and Walnut regarding the dress code, cleanliness, and time and attendance, (Tr. 584-587, 567-568, 591-594, 624-625, 810-812.)

comments by employees that they could not afford to buy new clothes and the arbitrary application of the dress code at other stores.[30]

In December, Pettinato was reassigned to manage Penn Medicine store for about one month while that store's manager was on leave. He returned to manage 34th and Walnut sometime in January and, shortly thereafter, the representation petition was filed. After the petition was filed, Rivera informed Pettinato and other managers to "track" employees regarding their support for the Union. At some point, however, that instruction was withdrawn.[31]

After the Union campaign went public, Rivera coached Pettinato to discipline employees because he was not new anymore.[32] Around that time, Rivera's pressure to enforce the dress code became more intense. Rivera insisted that Pettinato issue written discipline for dress code violations. However, Pettinato refused. Overwhelmed by the pressure to enforce or more strictly enforce the dress code and attendance policies, Pettinato abruptly resigned on April 4.[33]

After Pettinato's departure, Samantha Rodriguez took over as interim store manager at 34th and Walnut, while also continuing to manage 39th and Walnut. By April 13 or 14, Rodriguez began meeting individually with 34th and Walnut employee in the upstairs seating area of the store to review the dress code and time and attendance policy. After having employees read the policies, Rodriguez had them sign and acknowledge receipt thereof.[34]

Having previously taken a liberal approach in applying the dress code at her previously managed stores, Rodriguez took a harder line in these meetings.[35] Rodriguez started the meetings

[30] Pettinato cited the example of the lax dress code at 39th and Walnut, a nonunion store, which was managed by Samantha Rodriguez. (Tr. 585-587.)

[31] Once again, Pettinato was clearly reluctant to cast responsibility on Rivera for his actions and sought to impute it to Rivera's superiors: "But I just – I'm someone who believes in doing the right thing. And I just – it bothers me that people's names are being thrown around because like Juan is not a bad person. Juan is just somebody that just like anybody else is scared of getting fired and doesn't want – you know, is trying to do his job. So he was told this was passed down to him that we should keep track of people in their Union support and talked about on a call and ways to do it were discussed and it was pretty much just thrown away immediately because it was deemed that that is just a bad idea to do." (Tr. 595-598, 599-600.)

[32] Yet again, Pettinato expressed his frustration, being "really torn" because he "did not ever think that like [Rivera] was out to get people, but I did - - I did think that maybe he was being pushed to do this and - - and being like - - I - - I don't know that was afraid of losing his job just like I was." (Tr. 649-650.)

[33] Rivera did not deny Pettinato's testimony that Rivera began applying increasing intense pressure to issue written discipline for dress code violations, which Pettinato refused to do because he was "too nice" to do so. (Tr. 632-634.) Rivera testified that he put more effort into having Pettinato enforce policies after he returned to 34th and Walnut in January because Pettinato was no longer a new manager. However, given the credible evidence of noncompliance with the dress code at other Philadelphia stores prior to February 4, Rivera's explanation was unconvincing. (Tr. 590-592, 607-608, 808-817.)

[34] Low and Rodriguez provided fairly consistent versions of this meeting. (Tr. 348, 742-745; R. Exhs. 12, 42).

[35] In addition to the example cited by Pettinato regarding Rodriguez's application of the policy at 39th and Walnut, Rosa credibly testified that the dress code was never enforced at 20th and Market while Rodriguez served as that store's manager from July to October, 2021 (Tr. 42, 64-66.)

by handing out the Bargaining Updates. During her meeting with Low, Rodriguez talked about scheduling more mid-day shifts for Low, whose grueling schedule currently had her closing five to six days per week. Rodriguez followed those comments with a discussion of the call-out policy and dress code. Regarding the dress code, Rodriguez stated that the policy was not being followed at the store and there were employees who should not be working there. She then referred to the time she first arrived at 39th and Walnut. Rodriguez asserted that the store was disorganized, poorly managed, and staffed by employees who should not have been working there. She said that she got rid of those employees and replaced them with better employees, adding that the same thing could happen at 34th and Walnut. Rodriguez explained to Low that she would begin enforcing the policy the following week and noted, as an example, that Low's black t-shirt was outside the dress code because it displayed Halloween-themed graphics.[36] Until that point, Low had worn that shirt to work once a week since late October 2021.[37]

On or before April 24, Daniele Wilmer arrived to manage 34th and Walnut. With guidance from Rodriguez, who continued to play a supportive role, Wilmer began enforcing the dress code shortly thereafter.[38] During the period between April 27 and June 11, Wilmer documented 12 coachings for dress code violations—many of them for graphic t-shirts that had been previously tolerated.

6. Employee Availability and Callouts

Employee callouts were a persistent problem at 34th and Walnut, as well as at 39th and Walnut and other stores. The problem went on as far back as September 2021 and the store would often be stretched thin between 2 to 4 p.m. A contributing factor to that problem was the store's reliance on employees who attended college classes during the day or had other jobs.[39]

---

[36] On cross-examination, Low rejected the notion that Rodriguez's comment had anything to do with replacing certain employees who were better at following policies. (Tr. 377.) Asked to elaborate on redirect examination, Low credibly testified as to what she understood Rodriguez's statement to mean: "Given the context of what had been happening the past month or so, I took that to mean Union supporters." (Tr. 346-352, 377, 385-386; GC Exh. 11.)

[37] Low credibly testified that she had worn that shirt at least once a week since October, 2021 without incident. (Tr. 350-351.)

[38] Rivera testified that Wilmer began managing 34th and Walnut on May 9. (Tr. 837-838). However, Wilmer's chat messages with Rodriguez indicate otherwise. Contrary to Rodriguez's testimony, those messages also reveal that she was supporting Wilmer with more than staffing and scheduling. (Tr. 751; GC Exh. 57(a) at 1.) On May 2, for example, Wilmer informed Rodriguez via chat message that Low was wearing a Union shirt and asked, "We just say it's out [because] it's a graphic tee right? Just want to be careful about how I broach that." Rodriguez replied: I would say "hey just a fyi graphic [t-shirts] are not allowed to be worn at work. Moving forward please make sure we wear clothes within dress code" . . . And ask if they have any questions . . . Make sure to fill out the coaching log . . . If they give you pushback." Wilmer replied, "OK." Id.

[39] Low credibly described the difficulties encountered at times by a two-person crew during a two-month period. (Tr. 362, 369.) I also credited Pettinato's undisputed testimony that callouts "were a problem all the time - - and - - and not just in my [store]. It's like - - it's just retail, but Starbucks in particular, it gets hit pretty hard." (Tr. 149.) In January and February, Pettinato worked 55-60 hours per week because of callouts and the limited availabilities of employees. Rivera urged him to schedule employees for increased availability and hold them accountable as long as the schedule was made three weeks in advance

*7.* Alexandra Chabrak

Chabrak was hired in August 2021. She was an open and vocal Union supporter throughout the organizing drive. Prior to the filing of the representation petition for 34th and Market on February 4, Chabrak met with Union staff and spoke with coworkers to see they felt about representation. After the petition was filed, Chabrak wore a Union pin on her hat during every shift. On one occasion in April, a customer even complimented Chabrak her about the pin while Wilmer was standing next to her. Chabrak thanked the customer for the compliment and told Wilmer that it was great that customers supported employees efforts to unionize. Wilmer did not respond.[40]

At that time she was hired, Chabrak's availability was up to 40 hours per week from open to close, every day except for Thursday and Sunday.[41] However, Chabrak also informed Pettinato that her full-time availability would only be for the first two weeks because she would be working the following full-time schedule at another job after that: Mondays through Fridays, 8 a.m. to 4 p.m., except for Wednesdays, 10 a.m. to 6 p.m. After working full-time the first two weeks at 34th and Walnut, Pettinato approved Chabrak availability to work about 12 hours per week, Sundays from 10 a.m. to 6 p.m. and Mondays from 6 p.m. to close (9:30 p.m. or 10 p.m.). Notwithstanding her stated availability, however, Chabrak worked one or two weeknight shifts and one weekend shift until October. In October, she stopped working an additional weekday shift.[42]

In late December, Chabrak went on vacation for two weeks and returned in January. When she returned, she changed her availability from Sunday and Monday to Sunday and Thursday. However, Chabrak was not scheduled and reached out to Hanna Waddell, the interim store manager. The snafu was not resolved until Pettinato returned in January from his temporary assignment at Penn Medicine.[43] Pettinato text messaged Chabrak to clarify which of two availability requests on file she wanted him to approve. She clarified that her availability was on Sunday and Thursday.[44]

---

as required by the Philly Fair Workweek ordinance but Pettinato ignored that advice and worked longer hours to keep the store operating at regular operating hours. (Tr. 622, 814-815; R. Exh. 48 at 17-20.) Navy Ros, the Penn Medicine store manager suggested that Pettinato align with her store and 39th and Walnut and implement a 3-day minimum availability requirement like she did at her store. Pettinato was unable to do that. (Tr. 1056-1059; R Exh. 54.) Finally, I do not credit Rivera's testimony that employees need to work at least three times per week in order learn new recipes and provide excellent service. Neither Pettinato nor Rodriguez testified that either task suffered at 34th and Walnut due to callouts and understaffing. (Tr. 815-816.)

[40] Chabrak's open support for the Union at work is not disputed. (Tr. 394-395.)

[41] Based on her understanding with Pettinato, Chabrak listed her available hours for Thursday and Sunday, with the expectation that she would have those days off. (Tr. 395-396; R. Exh. 34.)

[42] Chabrak was a very credible witness. Her responses were as straightforward and spontaneous on cross-examination as they were on direct examination. Even though she ended up working "one to two weekdays a week" after the first two weeks, Pettinato did not dispute her testimony regarding his approval of her limited availability. (Tr. 395-397, 406, 419-420, 578.) He tried to have Chabrak agree to additional availability, but she declined. (Tr. 632.)

[43] Pettinato believed that "the manager that stood in for me just like forgot to schedule [Chabrak], I guess, for two months." (Tr. 597.)

[44] Text messages between Pettinato and Chabrak on February 22 indicate that Chabrak had two different

In February and March, Chabrak was scheduled to work a total of four days each month. Soon after Pettinato returned, however, Rivera told Pettinato to schedule employees to work beyond their availability. With the store located in a "college area," however, "a good portion of the schedule" was part-time, including employees who only worked a few hours at night. Given that reality, Rivera did not mention any employees in particular, except for one—Chabrak. Rivera repeatedly instructed Pettinato to schedule her to work additional hours beyond her availability. In contrast, Rivera did not pressure Pettinato to require Delaney Nordstrom, an employee who worked only two five-hour shifts a week, to increase her availability. "[M]orally torn" between Rivera's directive and having approved Chabrak's availability request, Pettinato declined to schedule Chabrak for additional hours and she worked a total of five days in April.[45]

After Rodriguez replaced Pettinato, she immediately focused on scheduling and availability. Soon thereafter, Rodriguez began calling the store's employee to ask about their availabilities in Partner Hours.[46] On April 7, Rodriguez text messaged Chabrak that she would be managing 34th and Walnut for the next two weeks and to call her when she got a chance. Chabrak, while at her other job, called Rodriguez on April 14 after a second request by text message. Rodriguez started by telling Chabrak that her availability of two days a week—one of which was less than a four-hour shift—did not meet the Respondent's business needs and she would need to increase it to three days. Chabrak replied that she would discuss her options with the Union before giving Rodriguez an answer. Rodriguez said that Chabrak had the options of submit a new availability, look for a store that could accommodate her availability, take a leave of absence, or resign. However, Chabrak needed to give her an answer by April 18. After Chabrak expressed her dismay because the store was understaffed, Rodriguez said that the part-time availability of employees contributed to understaffing. She also reiterated that she needed Chabrak to submit new availability. Chabrak then explained that she already had a full-time job and could not increase her availability. Rodriguez again insisted Chabrak increase her availability to three days as indicated in an "old availability" she submitted to Pettinato. Chabrak replied that it was a mistake, based on an old availability, and she was not available to work three days a week. Rodriguez replied that Chabrak could submit a new availability request to see if it fit the Respondent's business needs. Chabrak then asked if Rodriguez could show her where in the

availability requests pending. Chabrak clarified which was the correct one and Pettinato approved it. (GC Exh. 14, Tr. 421.)

[45] I credit Pettinato's anxious and reluctant, yet genuine, detailed and at times equivocal, testimony over Rivera's terse denial that he pressured Pettinato to require Chabrak to work additional hours. (Tr. 835-836.) Pettinato testified that Rivera wanted him to "schedule [Chabrak] more and was pushing me too, because I was being pushed to document a lot of people there. There was a lot of time in attendance things. There was a lot of changing going on. You know, there were a couple of people there. Wait, yeah, she worked 6:00 to 9:00 and yeah, there was talk of trying to get her to work more or a second weekend day. I couldn't get her to do it, though." (Tr. 579-584.) After explaining that "this wasn't like this is a rule for [Chabrak]," Pettinato was asked whether Rivera talked "about [Chabrak] in the same way that he talked about all the other very part time employees?" He testified: "Well, he didn't - - we didn't talk about the other ones. That's the point." (Tr. 615-616.)

[46] Rodriguez's testimony suggested that she first "identified time and attendance and scheduling and staffing" issues when she took over at 34th and Walnut. (Tr. 742.) Since September 2021, Ros, Rodriguez and Pettinato—at Rivera's direction—aligned on staffing issues. (R. Exh. 54.) Rodriguez estimated that about half of the approximately 20 employees at the time "barely had an availability, maybe one or two days. So it - - it was hard to write and effective schedule. (Tr. 742-745.)

handbook it said that employees could not work less than three days a week. Rodriguez insisted she had the authority to impose such a requirement and would provide Chabrak with a copy of the policy. However, she declined Chabrak's request to put the minimum three-day requirement in writing.[47] After their conversation, Chabrak text messaged Rodriguez asking "[w]hy can't [I] get that [I] can't work less than 3 days a week in writing?" Rodriguez did not reply.[48]

Rodriguez and Chabrak spoke by telephone again on or about April 20. Rodriguez told Chabrak that she could not accommodate her two days of availability at her other store, 39th and Walnut, nor could Penn Medicine, the other store in the University City area. Rodriguez again told Chabrak that she needed to increase her availability to three days but Chabrak reiterated that she could not work more than two days a week because she already had a full-time job. Rodriguez replied that Chabrak would not be scheduled past May 1 if she did not increase her availability. Chabrak concluded by noting that the store was very busy and profitable and asked why Rodriguez insisted she increase her availability if she was willing to work two days.[49] Rodriguez replied that the part-time employees were "not aligning with business needs."[50]

By this time, Rodriguez's implementation and enforcement of a minimum three-day availability requirement triggered five employee resignations—Sarah Gerome (April 11), Jerome, Dana Murphy (April 21), Emma Kulakowski (April 27), Coleridge [Cole] Neal (May 6), and Ryker Fry (May 10).[51]

---

[47] Rodriguez's inconsistent explanations as to why she pressured Chabrak to increase her two-day availability confirm that Chabrak was being singled-out because of her union activity. First, she testified that employee availabilities were inaccurate when she arrived at the store. (Tr. 743-744.) On cross-examination, however, Rodriguez conceded that she relied on Chabrak's previously approved availability, even she knew there were inaccuracies in the system. Finally, asked why she did not check Chabrak's past schedule at that time to confirm how many days a week she had been working, Rodriguez dodged the question with a general assertion that the schedules were not accurate when she first arrived. (Tr. 775-777.)

[48] Contrary to Rodriguez's testimony, she did not speak with Chabrak on April 7, ask to confirm her availability, and then ask Chabrak to update it when she said a three-day schedule was not correct. (Tr. 748-751.) Rodriguez's text messages to Chabrak on April 7 and 14—not mentioned by Rodriguez—corroborated Chabrak's detailed testimony that they first spoke by phone on April 14. (Tr. 400-405; GC Exh. 15.)

[49] I credited Chabrak's testimony about Pettinato's statements in late 2021 regarding the financial profitability of the store (Tr. 405-407.)

[50] It is not disputed that Rodriguez encountered challenges in putting together schedules for 34th and Walnut, which was understaffed. (Tr. 744-745.) However, her justifications for imposing a three-day minimum availability requirement were unconvincing. The store, located in a college area, had long been staffed by a significant number of employees that worked only one or two days per week. Moreover, there was no evidence that those employees were unable to keep up with updates, including new recipes. Nor was there an indication that Pettinato was unable to write a functioning schedule that included employees scheduled to work two days a week or less than four hours a shift. (Tr. 778-780.)

[51] Rodriguez was less than candid as to why she asked employees to confirm or correct mistakes in their availabilities. In contrast with such her requests at other stores she managed when no one resigned after being asked to correct or confirm their previously approved availability, her initiative at 34th and Walnut spurred five resignations. (Tr. 743-745, 765-774; GC Exhs. 57(b), 57(d).), 77(b) at 1.) Moreover, Rodriguez's explanation to Partner Resources on June 12 about her initiative was contradictory on its face:

> "[Rodriguez] had availability update but conversations with all partners, had 5 partners give notice when she asked that open availability to at least 3 days, but only had these conversations as partners

On or before Sunday, April 24, Danielle Wilmer was brought in to manage 34th and Walnut. Rodriguez continued to provide support role with respect to scheduling and looped in Wilmer regarding Chabrak's availability issues. That day, Wilmer chat messaged Rodriguez stating that "I see what you mean about [Chabrak]. Hung up on me too." She explained that she called Chabrak "to see if she could come in early, really just to make sure she was going to show up. And she very bluntly said 'I'll be in at 10.' And then just hung up while I was saying thanks etc." After exchanging comments about Chabrak's rudeness, Rodriguez said, "It's the culture that was allowed for so long . . . Don't worry. She's on my list." [emoji of upside-down smiley face][52]

Chabrak worked her last shift on May 1. On May 2, Chabrak text messaged Rodriguez asking for an "update on my employment status since [I] was told [I] won't be scheduled past today if [I] don't change my availability?"[53] Rodriguez called Chabrak and told her she was still employed but was frustrated that there was no resolution. Chabrak reiterated that she could not work more than two days a week because of her other job.[54]

On May 6, Wilmer text messaged Chabrak asking if she was interested in picking up a shift on Sunday, May 8. Chabrak declined because she was not going to be in Philadelphia that day. On May 10, Wilmer messaged Chabrak again, this time about a change in store hours:

> Hey, we are adjusting hours temporarily to preserve the partner and customer experience while we staff the store. I'm adjusting the schedule for next week to fit the hours. We are closing at 5 pm and out by 6 pm. So there's a few different options for your shifts next week, including taking predictability pay. Just give me a call at your convenience, and I can elaborate. Thanks.[55]

Chabrak and Wilmer spoke later that day. At the time, Chabrak was scheduled to work shifts on May 16 and 17 starting at 6 p.m. Wilmer confirmed the changes in the store's operating hours and gave Chabrak several options. They included coming in earlier, find comparable hours at a nearby store, or accept predictability pay under Philadelphia's Fair Workweek law.[56] Chabrak opted to take predictability pay and asked how long the changes would be in effect. Wilmer replied that the changes would last at least two months and added that the store would be reducing weekend hours. Frustrated that the changes to store hours essentially eliminated her weekday availability, Chabrak went into the Partner Hours and removed her availability on Sundays for the time being.[57]

---

tried to update availability to less than 3 days. If partners were already working 1-2 days but [Pettinato] had approved [Rodriguez] did not ask them to open availability." (GC Exh. 44 at 3.)

[52] GC Exh. 57(a) at 1.

[53] GC Exh. 15 at 2-3.

[54] Contrary to Rodriguez's testimony, this conversation was the first one between her and Chabrak. (Tr. 407-408, 415, 748-749.) Moreover, I credit Chabrak's testimony that she mentioned her other job, while Rodriguez could not recall that ever being mentioned. (Tr. 752.)

[55] GC Exh. 16.

[56] Predictability pay amounted to half of the pay Chabrak would have earned for her scheduled shift.

[57] Chabrak's credible testimony regarding this conversation with Wilmer is undisputed. (Tr. 408-413.)

On May 20, Rodriguez called Chabrak and left a message asking if she had decided how to proceed. Chabrak replied by text that she was under the impression that Wilmer was managing 34th and Walnut. Chabrak explained that she and Wilmer spoke about her availability and it was her understanding that there was nothing to follow up about.[58] Rodriguez replied that she was supporting Wilmer with staffing and scheduling and to call when she got a chance. Chabrak neither called back nor updated her availability.[59]

At the suggestion of Tisha Thornton, the Partner Resources associate handling Chabrak's case, Rivera followed up with a telephone call to Chabrak on May 27 but there was no answer. He called Chabrak again on June 3. Chabrak answered but was unable to talk because she was at her other job. Rivera told her it was important that she call him back about her availability so the Respondent could determine the next steps. He also told her that if he did not hear back from her within 48 hours, he would assume that she was not interested in the job anymore." On June 9, Rivera reported to Thornton that Chabrak never called him back and he wanted to "move to the next step in the process."[60]

Unbeknown to Chabrak, Wilmer scheduled her to work on Sunday, June 19. A few days later, Wilmer called and left a message for Chabrak informing her of the missed shift. Instead of returning the call, Chabrak text messaged Wilmer on June 21 stating that she needed to be "terminated in the system" so she could move her company 401(k) contributions into an IRA.[61]

8. Changes to Hours of Operations

34th and Walnut, located in a college area, is usually busy with high volume and sales. Due to the COVID-19 pandemic, the store's operating hours were limited until November 2020. After November 2020, the store's hours returned to normal. Including periods to perform pre-opening and post-closing tasks, those hours were weekdays from 5:00 a.m. to 9:30 p.m. and weekends from 5:30 a.m. to 8:30 p.m.[62]

The Respondent reduces store hours at times, including in the Philadelphia Market, for various reasons. Additionally, store hours generally change seasonally and quarterly. Since January 2020, its stores in the Philadelphia market have reduced hours of operation or closed at certain times due to employee availability, callouts due to COVID and other reasons, renovations, maintenance issues, and the weather.[63] 34th and Market is no different as revealed by the Respondent's records of its hours of operation between January 2020 and April 6, 2022:[64]

---

[58] In its position statement, the Respondent asserts that Chabrak separated on May 17. (GC-77(b) at 1.)

[59] GC Exh. 15 at 3.

[60] Rivera's testimony regarding his brief conversation with Chabrak is undisputed and corroborated by his chat message to Thornton. (Tr. 836-837; GC Exh. 44 at 4.)

[61] Chabrak's undisputed testimony regarding Wilmer's message is corroborated by Chabrak's text message a few days after the Sunday shift at issue. (Tr. 413-414; GC Exh. 16 at 2.)

[62] The total available work hours for employees during a regular week were 112.5 (82.5 hours during weekdays and 30 total hours on weekends. (Tr. 353; R. Exh. 48, 62.)

[63] It is undisputed that the Respondent adjusts hours as necessary for a myriad of reasons. (Tr. 354-355, 645-646, 699-700, 762-763, 922-923, 977-978, 980-981, 1043-1049.)

[64] R. Exh. 48.

January 1 to March 20, 2020—the store was open every day for regular operating hours.[65]

March 21 to April 19, 2020—the store was open every day for 11 hours.[66]

April 20 to May 6, 2020—the store was open every day for regular operating hours.[67]

May 7 to August 9, 2020—the store operated at reduced hours ranging from 6.5 to 11 hours per day.[68]

August 10, 2020 to November 8, 2021—the store, with a few exceptions, was open for regular operating hours.[69]

November 9 to November 18, 2021—the store operates at significantly reduced hours.[70]

November 19, 2021 to April 13—with the exception of drastically reduced hours for 12 days during the holiday period (December 22, 2021-January 2) and four days in March, the store was open for regular operating hours for nearly five months.[71]

April 14 to April 26—the store was open at reduced operating hours for 8 out of 13 days.

April 27 to May 4—the store operates at regular operating hours.[72]

From the time that Pettinato began managing 34th and Walnut in June 2021, the store was often short-staffed due to callouts and understaffing. Whenever there were callouts or a shift was understaffed, Pettinato would try to borrow staff from other stores. However, the other stores had the same problems and he would just work long hours helping out on the floor. By the end of 2021, Pettinato stopped trying to borrow employees and occasionally closed early or opened late. This happened several times a month.[73] However, these changes lasted no more than a day or two at a time because Pettinato did not want to permanently modify store hours.[74]

For a period of time, Rivera authorized Pettinato to schedule additional employee hours. By February, that ended when the Respondent decreased budgeted labor hours for its stores, and

[65] Regular daily hours of operation at the time was usually 17.5 hours. (R. Exh. 48 at 1-2.)
[66] Id. at 2-3.
[67] Id. at 3.
[68] Id. at 3-6.
[69] At this point, regular operating hours changed to 15.5 hours. (Id. at 6 to 16.)
[70] Id. at 16.
[71] Id. at 17-20.
[72] Id. at 20.
[73] Pettinato credibly explained that he developed anxiety from having to justify store hour modifications to Rivera. The process required him to email Rivera justifying his decisions with analytical research consisting of projected sales and labor costs. Pettinato explained that it was less work if he simply worked the entire day. (Tr. 568-574.)
[74] Pettinato explained that it "didn't seem sustainable for anybody" to permanently change store hours. (Tr. 572, 649-651.)

Pettinato was denied authorization to hire.[75] As stated above, Pettinato resigned on April 4 and was replaced by Rodriguez, who came in and quickly invoked a minimum three-day availability requirement. Rodriguez's initiative, which she carried out while Wilmer began managing the store in April, forced at least five employees to resign.

Following the aforementioned resignations, Rivera became more involved in the management of 34th and Walnut. On May 4, without a request or feedback from Wilmer, Rivera instructed her to shorten store hours:

> On another note, I'm concerned that you may be overstretched in trying keep your normal store hours but don't quite have the partners to support that. Please partner with [Ros] to figure out modified store hours that you can support [and] provide a +2 Starbucks Experience for our customers to modify store hours to 7 a.m. to 3 p.m. or 8 a.m. to 4 p.m. for 30 or 60 or 90 days from now. But don't hesitate to modify your store hours immediately to set you up for success. I'll be available to connect later today if you need my support with this.[76]

Later that evening, Wilmer informed Rivera that she would modify weekday store hours to 6:30 a.m. to 6 p.m. and weekends to 7:30 a.m. to 4 p.m.[77]

On May 6, Rivera emailed Doro Ba, his regional director, copying Eric James Long, a partner resources manager. Rivera reported that the store currently had 20 employees,[78] including six "with very limited availability (1-3 days/week for a few hours)," and the following time and attendance issues: the loss of five employees with less than two weeks' notice and two employees to job abandonment; 32 callouts in the last three weeks, amounting to a shortage of 206 labor hours, with the majority being openers or closers; and the abandoned shifts were mostly closing shifts, requiring early closures. Rivera concluded that "[t]his very limited partner availability and call outs does not support the business needs to operate at normal hours of operation (5:30am – 9pm)." He proposed the following steps: assigning a "permanent store manager (Danielle Wilmer starts on 5/9;"[79] immediately modify weekday store hours to 7 a.m. to 5 p.m., and weekend hours to 8 a.m. to 3 p.m.; hire 11 baristas with adequate availability; "level set expectations" for every

[75] Pettinato explained that the problem was not being able to get authorization to hire, but rather, that the Respondent's ""model for scheduling wasn't built" to handle Philadelphia's wage and hour requirements: "Fair work week is what mad it really difficult, because fair work week put a very rigid fix on how you could schedule somebody. . .. And when . . . you call home office or whatever, ask for advice, and they don't know what you're talking about." (Tr. 601-607.)

[76] GC Exh. 57 at 1.

[77] Aside from Rodriguez's forced separations based on the three-day minimum availability policy, Rivera's reliance of callouts as the reason for drastically reducing hours on May 6 was not credible. With the exception of April 25, the store was open for regular hours of operation during the previous 10 days leading up to and including May 4. (Tr. 829-834.) In addition, Grubbs testified that when store hours are adjusted due to callouts, "it's just the day," in which case the store "[opens] late because one of the openers called out" or "[closes] early because a couple of closers have called out." (Tr. 977-978.)

[78] That information was not credible, since 34th and Walnut's employee roster reveals that, of the 38 employees hired prior to May 4, eight resigned or gave notice prior to that date, leaving 30 still employed there as of May 4. (GC Exh. 77(b) at 1.)

[79] Wilmer actually began managing in April with Rodriguez still involved in scheduling and staffing.

employee regarding time and attendance; and follow up on two no call/no show cases.[80] On May 7, after Ba and Long consulted with legal counsel, they informed Rivera to "move forward with those plans."[81]

During the same week, Rivera met individually with employees in the café urging them to vote in the election. He also informed employees that the store's operating hours would be reduced. During Rivera's meeting with Low, she expressed concern that reducing store hours would have an adverse financial impact on employees who wanted to work more hours. Rivera simply replied that employees would still be able to pick up shifts at other stores. Following that discussion, Low had several conversations with Wilmer, who told her that hours were adjusted in order to have "shifts that are more fully staffed so we don't have to be stretched as thin." Clearly, effectively forcing five employees to resign because they refused to increase their availability did not help.[82]

From May 6 to July 13, 34th and Market operated 10 hours on weekdays and 7 hours on weekends.[83] During that period, the Union was certified on June 3 as the exclusive collective-bargaining representative of the store's baristas and shift supervisors. From July 14 to September 11, the store reduced hours even more, with many days in which the store was only open for a few hours. However, the Union was not given notice or an opportunity to bargain over those changes. It was not until September 12 that the store finally resumed regular hours of operation.[84]

*F. 20th and Market*

After 20th and Market's employees filed a representation petition on February 4, Store Manager Whitney Grubbs informed employees that pre-election group meetings would be held on Thursdays in the atrium in the building attached to the store. She explained that management was still trying to determine whether the store would remain open for the meetings or whether it would close. Grubbs also said the meetings were mandatory and, if an employee could not attend, she would have a one-on-one meeting to go over the material that was discussed in the meeting.[85]

Employees were scheduled at specific times indicated on the DCR. Rivera began the meetings with the usual introduction—no recording and the non-retaliation policy. Grubbs and Rivera encouraged employees to ask questions of the Union, answered any questions they had

[80] The fact that Rivera obtained the data from Wilmer *after* instructing her to shorten store hours, "immediately" if possible, indicates that he had already decided on or before May 4 to shorten store hours without any supporting data. (R. Exh. 38 at 3; Tr. 830-832.) If he did, he would have seen that the store operated at regular hours for 17 consecutive days up to and including May 4. (R. Exh. 48 at 20.)

[81] By then, Wilmer had already reduced operating hours to 10. (R. Exh. 38 at 2.)

[82] Neither Rivera nor Wilmer refuted Low's testimony regarding these conversations. (Tr. 356-358.)

[83] R. Exh. 48 at 20-22.

[84] Id. at 22-23.

[85] Grubbs and Rivera flatly denied that the meetings were mandatory but corroborated Rosa's detailed testimony that employees would be required to meet with Grubbs one-one-one if they did not attend the group meetings. (Tr. 50-52, 818-821, 975-977.)

about the election, and urged them to vote. Employees were never deemed a "no call, no show" or disciplined for not attending these group meetings.

1. February 17

Rivera and Grubbs held their first set of pre-election meetings on February 17. In the meeting attended by Alexandra Rosa, Amalia Inkeles,, Ace Hoberfell, and Nina Crews-Sargent, Rivera started by informing the employees about the representation petition, the election timeline, and the consequences of unionization. He asserted that collective bargaining could take years, start at "ground zero," and all benefits would have to be bargained for, include the Arizona State University college program and other benefits they currently enjoyed. Rivera also stated that bargaining could prevent the manager from helping on the floor or borrowing employees from other stores whenever the store was short-staffed because of the possible difference in pay rates between the store and nonunion stores. He likened the situation to the inability of stores outside of Philadelphia to borrow employees from stores within the city because of the difference in market rates.[86]

2. February 24

On February 24, Rivera and Grubbs met with Rosa, Inkeles, Crews-Sargent and Leslie Lewis. Rivera started by explaining that the unionized Canadian store's employees did not receive pay raises given to other employees in their market. He asserted that 20th and Market employees could experience the same consequences because the Respondent would be unable to unilaterally implement pay raises. Rivera also said bargaining could take years, would start at ground zero, and borrowing employees and having the store manager help on the floor could be an issue.[87]

3. March 3

On March 3, Rivera met with Rosa, Crews-Sargent, and Lewis. Rivera covered his previous points about prolonged bargaining and negotiating benefits from ground zero. Rosa then raised the issue of shortened store hours and the increase in borrowed employees. She stated that employees were struggling and asked when they could expect store hours to revert to normal. In another meeting that day, Rivera and Grubbs met with Inkeles, Ven Stahl, Katherine Hannah, John Evenden, and Darin McGee. Rivera and Grubbs spoke about their experiences with unions and encouraged employees to vote. Rivera told the employees to expect to be paying union dues immediately if the Union prevailed in the election. He also asserted that bargaining would start from the ground up, all benefits would have to be negotiated, the store would be unable to borrow employees from nonunion stores, and employees would be unable to transfer to stores outside of Philadelphia due to differences in market rates. Rivera also revisited his previous point about employees at the unionized Canadian store making less than nonunion employees in their market. Inkeles questioned how Canadian labor laws were relevant to the unionization of a store in the

[86] As Rosa explained, employee pay rates are variable and the Respondent does not have uniform wages for baristas and shift supervisors in Philadelphia. (Tr. 52-55.).

[87] Inkeles recalled attending her first meeting on March 3, but appeared hesitant and unsure. (Tr. 145.) Therefore, I credited Rosa's detailed testimony that Inkeles also attended on the meetings on February 17 and 24. (Tr. 53, 56.)

United States. In response to other questions, Rivera said he would get back to the employees as to whether they would still get scheduled raises if they unionized, and made no guarantees as to the continued ability of the store to borrow employees.[88]

4. March 10

On March 10, Rivera and Grubbs met with Inkeles, Rosa, and Lydia Fernandez. Rivera started by responding to questions at a previous meeting about the unionized Canadian store. Inkeles and Rosa, however, replied that they were not interested in having that conversation because it was not relevant to the labor laws in this country. At the end of the meeting, Rivera presented a video and handout about the company's employee benefits.[89].

5. March 17

On March 17, Grubbs met with employees Inkeles, Rosa, and Stahl.[90] Grubbs gave the employees copies of the Bargaining Updates. She told them to read the information and asked if they had any questions. The employees were not interested in hearing about the Canadian store because of the difference in labor laws. However, Rosa and Inkeles commented that the management rights clause proposed by the Respondent in Buffalo negotiations defeated the reason for unionizing because it gave the company control over staffing and scheduling. They also said it was interesting that the Respondent included a proposal preventing employees from transferring between stores, which the store's employees had also been told could result if they unionized. Grubbs responded that she too thought it was interesting.[91]

6. March 24

On March 24, Rivera met for the last time before the election with Inkeles, Rosa, and Fernandez in the lower atrium. The first part of the meeting involved a discussion about Wordle word games. The remainder of the meeting related to the election.[92]

7. First Week in May

[88] Contrary to Rosa's testimony that Inkeles attended the same meeting, the credible evidence suggests that Inkeles attended a separate session with two managers and different employees. (Tr. 57-58; 116-117, 145-153.)

[89] I based this finding on Inkeles' credible and undisputed testimony. (Tr. 153-154.)

[90] Rosa and Inkeles identified different employees who attended this meeting but their credible testimony regarding Grubbs' statements was not disputed. (Tr. 58-62, 155-160.)

[91] I based this finding mainly on Rosa's credible and detailed testimony, Inkeles testified that Rivera and Grubbs met at this meeting with her, Rosa, Lewis, Fernandez, Hoberfell, Crews-Sargent, and Britney Mathis. Inkeles, however, did not recall much about this meeting, other than being handed a flyer about the Union's organizational structure and information indicating that the Union's president could compel employees to strike. (155-161; GC-12.) Inkeles also testified that she attended a meeting with Grubbs in April with Paige Estep and Crews-Sargent where Grubbs handed out the bargaining updates. (GC Exh. 4.) Inkeles however, was unsure about the dates of the meetings and "lost count." (Tr. 162-164.)

[92] Inkeles had little recollection as to what Rivera spoke about at this one and one-half hour meeting after they spent time talking about Wordle. However, the general pattern was that all of the meetings involved discussion about the election. (Tr. 161-162.)

During the first week in May, Grubbs met one-on-one with store employees and handed them and handed them sample ballot for the representation election indicating that employees should "Vote and Vote No."[93]

8. Dress Code Enforcement

Prior to February, 20th and Market employees often worked out of dress code by wearing t-shirts with visible graphics or logos, crop tops, and headwear colors that did not comply with the policy. Grubbs did, however, coach or discipline employees on several occasions. During the period between November 30, 2021 and February 4, she issued a documented coachings on January 22 to an employee for wearing nail polish after being coached about that on January 4. Grubbs also logged verbal coachings on January 22 to an employee for failing to wear an apron, and unspecified dress code violations by Rosa on December 13, 2021 and another employee on January 31.[94]

Between February 11 and April 8, Grubbs issued verbal coachings on five occasions: February 22—coached an employee to wear an apron; February 23—coached Rosa for unspecified dress code violation); February 28—coached employee for graphic t-shirt, sweatpants and green sweater); and March 8—coached Rosa, Crews-Sergeant, and another employee for wearing graphic t-shirts. The March 8 coachings occurred while Rosa and Crews-Sergeant were returning from their breaks and had not yet put their aprons back on to cover them. Rosa's shirt bore an "AC/DC" logo that she had regularly worn to work but would cover it with her apron while on the floor, while Crews-Sergeant's shirt displayed the Union logo. Rosa also witnessed the dress code enforced against Lewis for wearing a multi-colored Versace headscarf they had worn to work every day since they were first hired.[95]

In May, a temporary manager covering for Grubbs told Inkeles told Inkeles that her shirt and hat pins were out of code. The shirt bore the Union logo, which protruded about one or two inches above her flannel shirt. After discussing the matter with Rivera, the manager permitted Inkeles to wear the pins but not the shirt. Inkeles covered up the exposed portion of the logo and resumed work. She did not, however, wear the shirt to work again.[96]

[93] I based this finding on Inkeles' credible and undisputed testimony. (Tr. 165-166; GC Exh. 13.)

[94] Inkeles said that the dress code was followed "loosely and liberally," while Rosa testified that she would wear a shirt with a graphic logo without any comment by Grubbs. (Tr. 68-69, 167-169, 966-973; R. Exhs. 14 at 00356 and 00364, and 15.)

[95] Rosa's estimated timeframe of the dual coachings to her and Crews-Sergeant—two weeks after the petition was filed—does not line up with Grubbs' log. Nevertheless, Grubbs did not refute Rosa's testimony regarding the March 8 coaching, as well as the ones issued to Crews-Sergeant and Lewis. (Tr. 66-70, 109, 115, 118-120, 973-974; GC Exh. 5.)

[96] Inkeles credible testimony regarding this incident is not disputed. (Tr. 169-172.)

9. Alexandra Rosa

(a) Rosa's Union Activities

Rosa began her employment at 20th and Market in July 2021 On February 4, the same day the Union filed a representation petition for 20th and Market, Rosa began wearing a Union button on her apron. She continued to wear the button regularly throughout the rest of her employment, including during shifts when she worked with Grubbs.

During the week following the filing of the petition, members of the store's organizing committee, including Rosa and Inkeles, approached Grubbs in the back of the store. The group told Grubbs, who had been on vacation the previous week, that they had filed the petition and did not want Grubbs to take it personally. Rosa also told Grubbs that she was a signatory to the "Dear Kevin" letter that accompanied the petition and hoped Grubbs took the time to read the letter. Grubbs said she had not yet read the letter.[97]

Rosa, who became involved in the Union campaign early on, did not limit her prounion activities to 20th and Walnut. On February 16, the *Nation* magazine published an article titled, "Starbuck Baristas in Philly Are Brewing Up a Union," that prominently featured Rosa and detailed her support for the Union.[98]

On May 1, the Philadelphia *Inquirer* published an op-ed authored by Rosa regarding concerns that the Respondent was retaliatorily reducing employees' hours since they filed a petition for unionization and expressing hope for how organizing could bring about an improvement in employees' working conditions. Rivera became aware of the op-ed on the same day, notified the media relations department and Ba, and distributed the article to other district managers. The following day, Rivera sent the op-ed to several store managers, explaining in case you get questions from partners or customers. I've already notified Media Relations and [Ba]."[99]

On May 25, the bargaining unit of baristas and shift supervisors voted unanimously, 11-0, in favor of Union representation. On June 3, the Board certified the Union as the exclusive collective-bargaining representative for 20th and Market.[100]

[97] Grubbs neither denied Rosa's account of this conversation or Rosa's account of her display of Union support at work. With respect to Rosa's testimony that Grubbs was standing nearby while Rosa told a coworker that she was also employed by the Union, I do not infer that Grubbs heard those comments. At the time, Grubbs was washing her hands at the sink and there the store's music was playing. (Tr. 43-50; 125-127; GC Exhs. 21, 31(a).)

[98] GC Exh. 2.

[99] Rivera testified that he was informed by a facilities manager about Rosa's "facilities-related comments" and assured her that they had been "addressed months ago and were, were not of concern in this moment." However, he did not explain what the "comments" were. (GC Exhs. 3, 64 at 2; R. Exh. 41; Tr. 44, 838-841.).

[100] GC Exhs. 31(b) and (c).

(b) Rosa's Relationship with Grubbs

At Rivera's instruction, Grubbs called partner resources on June 3 to open a case on Rosa "to have it on file."[101] Grubbs initially informed the partner resources manager that employees at 20th and Market "voted to unionize week of 05/23/22." Grubbs then reported that she approached Rosa to have a coaching conversation about "a couple of things" relating to "communication and aligning on M&V [mission and values]." Describing Rosa's reaction as "weird," Grubbs reported that Rosa, "out of nowhere," accused Grubbs of "being hostile," treating her "different than anyone else," and she did not feel comfortable speaking with Grubbs without union representation." Grubbs further reported that "this was not the first time [Rosa] has become hostile," and that she told Rosa that she was entitled as store manager to "some things need to happen in the moment especially health code violations." Finally, Grubbs reported that Rosa accused her of "talking about writing her up to other partners," and she replied that Rosa was not being "written up but in order to understand why the store was charged a milk haul back fee, [Grubbs] had to ask questions of other partners." The account also included a note that Rivera would coordinate with Partner Resources in responding to Rosa's insistence on union representation at a meeting she requested with Rivera.[102]

According to chat messages by Rivera on June 23, the Respondent concluded, "clearly we didn't have to honor Alexandra's request to have [Inkeles] present at our meeting. That wasn't an 'investigatory meeting.' We didn't request the meeting. She did."[103]

(c) The June 4 Incident

On June 3, Leslie Lewis, a barista, approached Rosa during their shift. Lewis told Rosa that their partner would be in town the next day and Lewis was considering calling out of work from their morning shift to spend the day with him. Rosa, also scheduled to open on June 4, begged Lewis not to call out because doing` so would make it more difficult to open.[104]

On June 4, Rosa opened the store and Lewis did show up, along with another employee, John Everdeen. Soon after opening, Lewis approached Rosa and asked if they could go home early that day. Rosa told Lewis it was unlikely because one employee had already called out, but that she would send Lewis home early if she could. At that time, Lewis did not say they were ill or indicate as much on the COVID log.[105]

---

[101] Asked on cross-examination whether Rivera previously instructed her to open a partner resources case for Rosa, Grubbs did not recall. Nor could she recall speaking with partner resources about Rosa. (GC Exh. 40; Tr. 998-999, 1185-1187.) Since there was no testimony regarding this incident, I credit the report only to the extent that it reflects Grubbs' statements to the partner resources employee.

[102] Grubb's conversation with Rosa occurred just over a week after the May 25 ballot count and one day before the certification of representative. (GC Exh. 31(b) and 40 at 1-2.)

[103] GC Exh. 64 at 4.

[104] Lewis, called by the Respondent, did not deny Rosa's credible and detailed account of their June 3 conversation. (Tr. 72-73.)

[105] I based this finding on Rosa's credible and detailed testimony. (Tr. 77-78.) Lewis, still employed by the Respondent, on the other hand, was curt and vague on direct examination and then tentative and evasive on cross-examination. Moreover, their testimony was fraught with inconsistencies as to whether

Later that morning, another employee called out of Rosa's morning shift. Rosa immediately notified Grubbs that she was short-staffed with two call outs. Grubbs told Rosa that she would try to find coverage and was coming in to assist. Grubbs arrived a few minutes later, put on her hat and apron, and went to the restroom. When she came out, she told Rosa that she vomited. Rosa urged Grubbs to go home. Grubbs declined and explained that she was feeling better after throwing up. About two minutes later, however, Grubbs started gagging and ran to a sink. Shortly thereafter, Grubbs told Rosa that she reconsidered and was going home. On her way out, Grubbs told Rosa she would try to find additional coverage.[106]

About five minutes after Grubbs left, Lewis returned from their smoke break, went to the back of house, and returned with their bag and jacket on. Lewis approached Rosa as she was making a drink and said, "Bestie, I need to go home."[107] Rosa, focusing on the drink, told Lewis that she could not just send them home. Lewis replied that he "just barfed all over the place back there." Rosa turned to Lewis and said, "Lou . . . what?" After Lewis insisted that he vomited, Rosa told Lewis "no" and that they needed to call and let Grubbs know so she could find coverage for the store. Lewis returned to the back of house, put on an apron, and came out to wash their hands. While Lewis was washing their hands, Rosa, working at the cold bar next to the wash sink, asked Lewis why they did not call Grubbs. Lewis replied that they were not going to call Grubbs because they did not feel that it was worth it and proceeded to work the rest of their shift.[108]

(d) The Instagram Posts

Later that evening, Lewis posted the following message on their Instagram "finsta" account that was visible only to Lewis and a few close friends—Rosa, Hoberfell, Inkeles, Lydia Hernandez, and Kate Hannah:

> Fuck migraines and fuck anyone who doesn't take them seriously my pain was so bad I couldn't keep anything down for like 5 hours INCLUDING water and ibuprofen.

---

they previously told Rosa about vomiting as the result of migraine headaches ("I'm like struggling for some reason" and "she knew before that I had gotten sick at work" but "I don't think it happened with her at work.") (Tr. 1090-1094, 1107-1109.) Finally, Lewis filled out the COVID log, stated that they did not have any COVID symptoms, and was vague ("Yeah, probably") as to whether vomiting was one of the listed symptoms. (Tr. 1106-1107.)

[106] Lewis, who was on smoke break during the time that Grubbs was at the store, clearly lied when they testified that Grubbs did not come to the store that day. (Tr. 1091.) During her direct examination, Grubbs made no mention about being at the store that day. On cross-examination, however, Grubbs corroborated Rosa's testimony that she was at the store on June 4. She also conceded that she briefly saw Lewis and that they did not exhibit any symptoms of illness. In essence, Grubbs corroborated Rosa's credible and detailed rendition of the incident and portrayal of her illness that day. (Tr. 78-81, 998.)

[107] Lewis conceded that they and Rosa referred to each other as "bestie." (Tr. 1108.)

[108] Under the circumstances, Rosa reasonably believed that Lewis was lying about being ill so he could leave early. In fact, the circumstances suggest that Lewis waited until Grubbs left before approaching Rosa about leaving early. On the other hand, Rosa was also aware of the Respondent's policy that she, as shift supervisor, needed to send an employee home if they told her "that they were throwing up." (Tr. 82-86, 122-124.) Asked why she did not call Grubbs even though all the store's shift supervisors had a "pretty open communication line" with Grubbs, Rosa testified that she merely "defaulted to [her] store manager." (Tr. 82-86, 122-124.).

Rosa did not see the post until the following morning, considered it a reference to and criticism of her response to Lewis' excuse for trying leave work early on June 4:

> That's literally not what happened, you didn't have the gall to call Whitney and tell her you needed to go home. [Because] we both know you have no problem calling out, and you thought our friendship meant I'd let you go home over BS excuses. So I said if you need to go home you need to tell Whitney so she can find coverage. Sorry you made up a whole scenario in your head to post to your finsta, which is fucking crazy by the way. [G]et well soon.[109]

(e) The Respondent's Investigation

A few days later, Lewis told Grubbs they were upset about the June 4 incident with Rosa. Lewis provided Grubbs with their version of incident, as well as the contentious social media posts by Lewis and Rosa later that evening.[110] On June 8, Grubbs called partner resources to open a case into Rosa. The partner resources note stated that Grubbs' consultation request sought "guidance with next steps" regarding discipline, including separation—"SS CA (or) Separation Consultation — (Social Media Post)."

On June 9 at 12:07 p.m., Grubbs spoke with Nicholas Tobias, a partner resources associate. During that conversation, Grubbs told Tobias that: (1) Lewis "provided a screen shot of the social media *but they have not provided a statement*" (emphasis supplied); (2) Grubbs had not yet spoken to Rosa, and (3) Grubbs recently had a "tough conversation" with Rosa and "their DM and is not sure how she will take the conversation.[111] Tobias advised Grubbs to (1) collect a statement from [Lewis] about the incident at work and the social media post – "attach the statement and screen shot to the case;" (2) "attempt to have a discovery conversation with [Rosa] about her perspective of the situation, seeking to understand her knowledge of the social media and illness policies – collect a statement to attach to the case;" and "if [Rosa] does not feel comfortable speaking with her due to the recent conversation, to notify me and I will reach out to [Rosa] to speak about the situation."[112] Within an hour, Grubbs obtained a handwritten statement from Lewis.[113] Grubbs proceeded to transcribe the statement and sent it to Tobias at 1:13 p.m.[114]

---

[109] Again, under the circumstances, Rosa reasonably believed that Lewis' post was referring to their interaction at work on June 4. (GC Exh. 7; Tr. 73, 92-93, 133.)

[110] Asked whether Grubbs asked them any questions, Lewis testified "Not really, I guess no." (Tr. 1094-1095.) However, that testimony is not inconsistent with Grubbs testimony that she merely asked Lewis "what happened." (Tr. 943.)

[111] Grubbs' testimony that Lewis provided her with a screen shot of the social media posts *and* a written statement prior to contacting Rivera and partner resources was false. (Tr. 943-946; R. Exh. 1.) Tobias' entry clearly states that Grubbs, at the time they spoke on June 9, had not yet obtained a statement from Lewis. (R. Exh. 4 at 01170-01171.)

[112] Id. at 01169-01170.

[113] Lewis talked with Grubbs "a couple of times so we could figure out what to do moving forward. But she was the one that you know had me take a statement and filed it and did something with it." (R. Exh. 1; Tr. 1100-1102, 1104-1106, 1110-1112.)

[114] Lewis' statement made no reference to the fact that Grubbs was at the store and left just before Lewis told Rosa that he was sick. Moreover, contrary to Tobias' testimony that Lewis was referring to their mother in the social media post, Lewis' statement asserted otherwise: "[the post] wasn't directly talking

On June 11, the store closed early due to understaffing and Grubbs and Rosa were preparing for the next day. Towards the end of the shift, Grubbs had a "quick" conversation with Grubbs about the incident with Lewis. Grubbs asked if Rosa was familiar with the illness and social media policies. Rosa replied that she was familiar with the illness policy but not the social media policy. Grubbs then mentioned the social media post involving Rosa and Lewis and asked Rosa what happened. After detailing her version of the incident with Lewis, Rosa explained that she responded to Lewis's social media post because Lewis used it to criticize her. Rosa admitted to Grubbs that her responsive post "didn't put her in the best light, but the truth is still the truth." Grubbs replied that there was going to be investigation into the matter because the Respondent's employee health policy requires a supervisor to take an employee at their word and send them home immediately if they state that they are sick or throwing up.[115] Grubbs added that it did not matter if Rosa knew that Lewis was lying. She also told Rosa that she would give her a copy of the social media policy. Rosa asked whether Lewis would also be investigated "for telling me to fuck off on social media." Grubbs replied that Lewis would not be investigated because their post was generally or vaguely worded, while Rosa's post mentioned Grubbs' name and, thus, referred to the company. Grubbs did not collect a statement from Rosa—as Tobias requested—and, instead, said that someone from ethics and compliance or partner resources would be contacting her. Rosa then invoked her *Weingarten* rights during the investigation. Grubbs replied that *Weingarten* rights applied to disciplinary processes but not investigations.[116]

On June 14, Grubbs messaged Tobias the following report of her conversation with Rosa on June 11:

> I spoke with Alexandra over the weekend and she said that while she is aware of the illness policy she felt even like even though {Lewis] told her they threw up she felt like they weren't telling her the truth and were only asking to go home because she thought they would let them off easy because of their friendship. She also said she was not aware of the social media policy, so I made sure to print it out for her.[117]

Tobias replied a few hours later, thanking her for the information. However, the entries that followed were redacted and directed Grubbs to "use this encrypted link to notify me of what support is needed then I will prioritize reaching out to you." On June 16, two entries by Tobias indicate that he consulted with counsel about Rosa's case.[118] On June 17, Tobias instructed Grubbs as follows:

---

about anyone. It was just a general expression of frustration. However, for some reason, Alexandra made a COMPLETELY inappropriate comment on the post." (R. Exhs. 1, and 4 at 01169; Tr. 1139.)

[115] It is undisputed that, prior to June 11, no one from management had ever told Rosa that she was supposed to send an employee home if she believed they were lying about being sick. (Tr. 103.) Nor is such a situation covered by the employee health policy. (R. Exh. 6 at 8-9.)

[116] Grubbs' version of this conversation was brief and did not refute Rosa's account. However, when asked why she took a written statement from Lewis as Tobias requested but not one from Rosa, Grubbs had no explanation. (Tr. 94-96, 947-948, 995-998.)

[117] R. Exh. 4 at 01169.

[118] Tobias testified that redactions in the case information related to instances in which he conferred or intended to confer with counsel on disciplinary cases. (Id. at 01168; Tr. 1132-1133.)

> I hope you are doing well. I'm following up on our consultation regarding SS Alexandra. The recommendation is Separation for violating Starbucks Illness Policy and unprofessional behavior. Please draft the notice of separation and attach to the link in this case. [REDACTED] If you would like to discuss this further with me, please use this encrypted link to notify me of what support is needed and then I will prioritize reaching out to you. [119]

Grubbs sent Tobias a draft notice of separation later that day. Tobias acknowledged receipt but the statement that followed was redacted. On June 22, Tobias closed the case.[120]

(f) Grubbs Belatedly Disciplines Nina Crews-Sargent

Prior to June 14, Grubbs disciplined an employee for violating the COVID-19 check-in policy on only one occasion. On January 24, Grubbs issued a final written warning to Benjamin Diaz came for "[coming] to work from an isolation despite worsened symptoms of Covid 19." The warning stressed the importance of completing the COVID virtual coach before clocking in, isolating as needed if indicated by the virtual coach, and not putting customers and coworkers at risk by failing to disclose new or worsening symptoms. "Going forward, you are expected to complete the virtual coach before every shift and to isolate as needed. Failure to do so will result in separation of employment." The write-up did not mention that Diaz went to work with worsening symptoms of COVID-19, failed to disclose them on the COVID virtual coach, and proceeded to work their shift until Grubbs noticed they were ill and sent them home.[121]

The COVID-19 check-in policy was violated again on March 31 when Crews-Sargent "failed to properly follow the check-in process regarding Covid-19 safety measures and falsified

[119] Contrary to the Respondent's assertion, the investigation into Rosa's conduct on June 4 was clearly deficient and contravened its normal disciplinary practices. (Tr. 1133-1136; R. Exh. 43.) Tobias testified that neither he nor Grubbs obtained a statement written statement from Rosa because the evidence was "overwhelming" and he had a "discovery note conversation" from Grubbs about her conversation with Rosa. (Tr. 1156-1158.) However, he conceded on cross-examination that having a "discovery conversation" with and "[collecting] a statement" from Rosa—both of which he instructed Grubbs to do—were two different things. Tobias also acknowledged the importance of collecting a written statement even where "the situation is cut and dry" because "an employee might have something additional to say that isn't clear from" the information provided. (Tr. 1168, 1173-1175.) Yet, Grubbs never ever obtained a written statement from Rosa like she did with Lewis and Tobias advanced the separation process without one. (Tr. 996.) Moreover, although she was told to expect a call from Ethics and Compliance or Partner Resources, Rosa never received one. (Tr. 1156-1157). As a result, the Respondent's investigation lacked a written statement from Rosa detailing her work incident and social media interactions with Lewis on June 4—little of which was reflected in Grubbs' brief description of her June 11 conversation with Rosa. Tobias' questionable grasp of the facts was also evident from his direct testimony that Lewis' Instagram post "related to their mother" and on cross-examination that the post "had nothing to do with work." Yet, he conceded that he did not actually know that to be the case and knew that Rosa believed the post to be work-related. (Tr. 1139-1140, 1176-1177.)

[120] Id. at 01167-01168.

[121] Grubbs did not recall the details of Diaz's January 24 discipline. Nor did the Respondent produce any evidence that it issued a warning to any shift supervisor in connection with Diaz's incident in January. (GC Exh. 47; Tr. 983-989.)

the Partner Pre-Check Log stating that they were clear to begin their shift despite having primary symptoms of Covid 19." Crews-Sargent texted Grubbs the night before stating they were "not sure if they wanted to go in 3/31." Grubbs asked if Crews-Sargent had COVID symptoms but they did not reply.

On April 6, Grubbs contacted Partner Resources. She initially noted that Crews-Sargent had ongoing time and attendance issues and shared the details of the Crews-Sargent violation. On April 7, Corrine Crowley, a Partner Resources associate, advised Grubbs to "have a discovery conversation with Nina to understand her decision making and hear her side of the story before we determine the right level of accountability." On April 14 and 25, Crowley requested follow-up reports from Grubbs. On May 3, Grubbs finally replied:

> Hi Corrine, I spoke with Nina and they said that they didn't do the Covid check that day, only that they told their supervisor (Ace) that they had a sore throat. Nina did sign the log saying they did sign the log saying they did the pre-check. Ace said Nina did not tell him about the symptoms and that he thought Nina had done the pre-check but didn't check to confirm, he just initialed in the book.

On May 5, Crowley met with Grubbs and Rivera. Crowley initially noted Rivera's statement that three stores in his district petitioned for representation. The rest of the note explained Grubbs' dilemma as to whether or not to issue the discipline, given that she partly contributed to the confusion which led Crews-Sargent to report to work on March 31:

> -BAR Nina texted with SM and disclosed symptoms, SM did not see it and BAR thought this was the green light to work
> ARE THERE PREVIOUS SIMILAR SITUATIONS?
> -In January a SS received a FWW for not verifying a check in, partner had multiple symptoms and worked for 3 hours, SS admitted they did not verify[122]
> -In January COVID check in was reviewed with the SSV cohort (just verbally)
>
> -SS Ace says Nina did not disclose, but he did not confirm, he just initialed in the book
> -SM Whitney to level set with SS cohort
>
> Aligned on FWW for BAR Nina due to WW on file and ongoing T&A issues, SM to include COVID check in on FWW
> Aligned on print off/review & sign of check in procedures with entire SSV cohort, sign and place in partner files
> Aligned on WW for SS Ace as he did not verify but there was a lot of confusion around this situation

[122] The incident described in this entry resembles the timing and facts surrounding a final written warning issued to Diaz on January 24 for coming to work from isolation with worsening COVID-19 symptoms. (GC Exh. 47; Tr. 984-985.) Grubbs testified that she could not recall the specifics of that incident. Respondent did not produce any evidence that it issued a warning to any shift supervisor in connection with Diaz's incident in January.

> SM to send copies of FWW and WW for SPRA review and review by employment attorney[123]

On May 12, after requesting and getting additional background details from Grubbs, Crowley emailed Grubbs a final written warning to be issued to Crews-Sargent for violating the COVID-19 check in policy on March 31 and being late or absent on 17 occasions between February 14 and April 5. Crowley's note also indicates that she closed the case at that point.[124] Grubbs, however, did not issue the final written warning to Crews-Sargent until June 28.[125]

(g) Rosa's Termination

On Saturday, July 2, Rosa was working the morning shift when Grubbs arrived between 7 and 7:30 p.m. At about 7:45 a.m., Grubbs, who does not usually work on weekends, approached Rosa during her break and told her that she had an update about the investigation. Rosa suggested they talk at that point but Grubbs told her to finish her break and they would talk later. Suspecting that she would be terminated as soon as Grubbs was able to bring in someone to witness the event, Rosa emailed Grubbs her "Two Weeks Notice" at 7:55 a.m.:

> Hi there, This email is to inform you of my two weeks notice. We spoke in person about this on Thursday, June 30th. My last day with Starbucks will be July 15th.[126]

Shortly after Rosa returned from her break, District Manager Albert Millan arrived and met with Grubbs. A few minutes later, Grubbs told Rosa to meet them in the back room. Rosa went there right away. Grubbs and Millan followed. Grubbs started the conversation by asking Rosa if she remembered the June 4 incident with Lewis. After Rosa replied that she recalled the incident, Grubbs said there was an update, handed her a notice of separation and read it out loud.

---

[123] GC Exh. 71 at 2.

[124] Id. at 1-2.

[125] Several factors lead me to infer that Grubbs was motivated to discipline Crews-Sargent for violating the illness policy to generate a comparator for Rosa's discharge. First, Grubbs omitted any reference to Crews-Sargent's discipline on direct examination. Second, Grubbs was unable to explain the long delay in implementing the discipline, especially since it issued 11 days after the Respondent decided to terminate Rosa for violating the same policy, and just four days before terminating Rosa. Third, adding to the suspicious timing of Crews-Sargent's discipline, the illness policy violation was bundled with 17 time and attendance violations. Clearly, the latter violations alone, which ran through April 5, would have been sufficient grounds for issuing Crews-Sargent a final written warning since they were previously issued a written warning on January 31 for time and attendance violations from December 3, 2021 to January 25. Yet, Grubbs waited nearly three months before reviving those violations. (Tr. 989-993; R. Exh. 70 at 1)

[126] The Respondent did not refute Rosa's credible testimony that the company typically has an additional manager attend termination discussions and she attempted to resign to avoid the stigma of a termination on her employment record. (GC Exh. 8; Tr. 97-101.) Nor did Grubbs dispute Rosa's credible testimony, corroborated by her text message on June 27, that they had a "lengthy conversation" on June 30 about Rosa moving out of state in mid-July and whether she should transfer or resign for a for a few weeks and then apply to another store at the new location. (Tr. 99-100.) In her June 27 text to Grubbs, Rosa gave her a "heads up" that she was "looking to transfer out of state effective July 1" and wanted to speak wanted to speak with Grubbs about it on Wednesday, June 29. Grubbs replied: "Sounds good how[.] How are you feeling?" That conversation, however, turned to be on June 30. (GC Exhs. 8-9.)

Grubbs asked Rosa to sign the document but Rosa refused because she did not agree with the part stating: "Despite admitting your awareness of the requirements." Rosa further asserted that she never had such a conversation with Grubbs and no one talked to her about it or called her to discuss it. Grubbs said that was fine and Rosa then asked if it would have a bearing on her ability to transfer to another store. Neither Grubbs nor Milan had an answer. All Grubbs knew was that Rosa was terminated, while Millan simply said that the separation notice would be in Rosa's employment file if she sought to be rehired in the future.[127] Rosa then asked about her *Weingarten* rights but Grubbs replied that they only applied to investigations but not disciplinary conservations. At Grubb's request, Rosa handed her store keys and left. At no time prior to discharging Rosa did the Respondent give the Union notice of its intention to impose discipline her and offer it an opportunity to bargain over the action.

(h) Discipline

The facts and circumstances surrounding the discharge of Rosa, who had a spotless disciplinary record, are clearly distinguishable from those involving other employees who violated the illness and How We Communicate policies prior to July 2. In each instance, the comparator was either issued a final written warning or discharged based on a prior history of discipline.

As previously detailed, Diaz and Crews-Sargent were issued final written warnings on January 24 and June 28, respectively, for violating the illness policy by falsely reporting on the COVID virtual coach that they had no symptoms and proceeded to work their shifts until they were caught. In February, Diaz was issued additional written warnings for time and attendance and cell phone policy violations. On March 30, Diaz was finally discharged after arriving to work an hour late and out of dress code, and then repeatedly cursed at Grubbs when she tried to coach them about being late.[128] In contrast, Rosa was discharged for failing to immediately send home an employee whom she believed to be lying about their symptoms. Had Grubbs collected a written statement from Rosa to get her "perspective," as instructed by Tobias, Rosa would have had the opportunity to provide the details of her incident with Lewis. As a result, Tobias never learned the full details of Rosa's interaction with Lewis on June 3 and 4, nor Rosa's response to Grubbs' illness on June 4.

On April 9, 2021, Dengel was inclined to issue only documented coachings to 12th and Walnut employees Maddie Barton and Bailey Clark for violating the How We Communicate Policy by "gossiping" to each other about Dengel's application of the dress code, as well as violating the dress code. Dengel consulted with Fable, who recommended that she issue written warnings. Although Dengel drafted the corrective action forms and showed them to Barton and Clark, the forms neither signed nor placed in their employment files.[129]

[127] Rosa credibly testified that she was referring to the fact that prior to June 11 no one from management ever told her that she needed to send an employee home if she believed the employee was lying about being ill. (Tr. 102-105.)

[128] GC Exh. 46.

[129] Dengel testified that the gossiping, which was actually criticism about her level setting employees over the dress code, violated the How We Communicate policy because the employees should have brought their concerns to her. The unsigned corrective action forms were admitted based on Dengel's testimony—subject to the weight to be applied—that they were presented to and signed by Barton and Clark. According

On December 13, 2021, Dengel issued a final written warning to Madeline Levans for violating the How We Communicate policy on two occasions. The first incident occurred on November 29, 2021, when Levans used the word "shit" when speaking to Dengel and another shift supervisor in the presence of customers. The second violation occurred on December 6 when Dengel met with Levans and ask her questions about the DCR. Levans became visibly frustrated and defensive and failed to act in a "professional and respectful manner." In contrast, Rosa's contentious exchange with Lewis on June 4 occurred during nonwork time and on a private social media group site. Moreover, Rosa showed only respect for her manager when she suggested Grubbs go home when she became ill and again when Grubbs met with Rosa to ask discovery questions about statements she made in a private social media group.[130]

On May 19, Samantha Rodriguez discharged Greta Smith, an employee at the 39th and Market Street store for "[using] profanity in the front of house with customers present." Specifically, Smith asked a shift supervisor where she was supposed to be deployed. The shift supervisor, however, said he was not in charge. Smith then responded, "Fuck this, I can't do this today" and stormed off the floor." When she returned to the back room, Smith engaged in a yelling match with the shift supervisor. The notice of separation noted that Smith "previously received two corrective actions for failure to live our Mission and Values including a Documented Coaching on 2/17/2022 and a Written Warning on 3/30/2022."[131] In each of those instances, the discipline was based on Smith's "loss of composure." In contrast, Rosa was charged with violating the communication policy in her exchange with Lewis during nonwork time and in a private social media group setting.

On May 31, Caliph (CJ) Johnson opened a Partner Resource case into Miyah Smith, a barista at the Philadelphia store he managed after transferring from 12th and Market.[132] Smith violated the social media on multiple occasions by posting videos on social media while working. The videos included instances of her flaunting the dress code by refusing coaching to remove her

---

to the Respondent, "there's two sources for corrective action forms. One is the hard copy in the personnel files. The other is from . . . partner relations, a more centralized resource." However, neither was produced and Dengel did not know if such records were actually filed—she was no longer the store manager—and the Respondent failed to produce them as required pursuant to the General Counsel's subpoena duces tecum. Under the circumstances and the lack of reliable evidence, I find that the forms were presented to Bailey and Clark but were not signed by them and a manager and filed in their personnel files. (Tr. 668-683, 702-705, 732; R. Exh. 18, 18(a).)

[130] Dengel testified that Levans "used some profanity, which is a - - which is a very serious - - it's a very serious thing to, especially in the front of house when customers are present and can hear.to use profanity in front of customers. (Tr. 685-688; R. Exh. 21.)

[131] Although not specifically mentioned, Rivera clarified that Smith's violation of the Respondent's "Mission and Values" was based on the How We Communicate Policy. (R. Exh. 50-51; Tr. 842-847, 850-854, 856-858.)

[132] I decline the General Counsel's request to disregard this and other disciplinary case files processed with the "Petitioned Market" designation. The argument that the designation is proof that managers' disciplinary actions were tainted by union activity is unsupported by the facts and circumstances of each case. As Tobias acknowledged to the General Counsel, the designation was an indication that Partner Resources should seek legal consultation in cases involving separation at a unionized store to ensure consistency in the application of discipline. (Tr. 1165-1166.)

nail polish at work and pouring cream into a coffee cup with the words, "No bitches" written on it. Johnson also noted that he would be looking into why shift supervisors were permitting such behavior. Johnson was inclined to issue Smith a final written warning, while Tobias leaned towards separation. However, Tobias asked Johnson to have a discovery conversation with Smith, get her statement, and he would then arrange a legal consultation. Johnson then met with Smith, who admitted that she was making the videos to start a trend. However, before Johnson could "collect a statement," Smith "provided immediate resignation via text message after leaving the store." Tobias then advised Johnson to confirm that Smith's resignation was accepted.[133] In contrast, Rosa's effort to resign in order to avoid having a discharge reflected in her employment records was essentially rejected.

On one occasion during the summer, a group of minors came into the 9th and South store. One of them had a kiss mark on his neck. Barista Connor Lisher then went to the back of house and remarked to the assistant store manager and a shift supervisor, "damn, he gets more pussy than me." The remark was reported to Dengel. After consulting with Fable and Partner Resources, Dengel proceeded to draft a final written warning for Lisher's "offensive and inappropriate behavior for the workplace." In early August, Angela Grass, the new store manager at 9th and South, met with Lisher over the incident. Dengel was also present as a witness. However, the corrective action form was never signed by anyone or placed in Lisher's employment file.[134]

Finally, on August 25, Tobias recommended the termination of Phoebe Wyatt, a shift supervisor at unionized store in Stevensville, Maryland. The notice of separation stated, in pertinent part:

> On August 6, 2022, Shift Supervisor Phoebe Wyatt violated Starbucks Illness Policy by knowingly allowing a partner to stay clocked in and working within the store after vomiting in the bathroom. Phoebe had reached out to the [store manager] to send the partner home and the [store manager] verified that this was the appropriate action. By allowing the ill partner to remain in the store, Phoebe put the health and safety of other partners and customer at risk.
>
> In addition, Phoebe closed channels of the business to customers (drive-through and café) without consulting with or getting approval from the store manager/district manager. When the [store manager] questioned the decision, Phoebe could not provide reasonable excuse for closing the business.[135]

[133] Tobias conceded that even though the case against Smith was "cut and dry," he still asked Johnson to collect a statement from Miyah Smith. (Tr. 1159-1162, 1167- 1169; R Ex. 19).

[134] Dengel testified that the decision to issue Lisher a final written warning came from Partner Resources. However, no such evidence was produced pursuant to subpoena duces tecum. As in the case of Barton and Clark, Dengel's spotty testimony indicated that a Partner Relations case file was created but not produced as required pursuant to the General Counsel's subpoena. Accordingly, I find that the undated corrective active form was drafted and shown to Lisher but never signed by him and/or a manager or placed into his employment file. (Tr. 689-694, 721-731; R. Exh. 23.)

[135] R. Exhs. 9.

Wyatt and Rosa, both shift supervisors, were written up and discharged for, in part, violating the illness policy. Both cases were supported by Tobias. However, Wyatt's case is distinguishable in several significant respects. First, Wyatt's discharge occurred after Rosa's discharge.[136] Second, Wyatt was employed at a store in Stevensville, Maryland, which is located approximately 110 miles away from Philadelphia.[137] Third, the facts surrounding Wyatt's discharging are noticeably more serious that those involving Rosa. Wyatt was accused of insubordination by disobeying a direct order from her store manager to dismiss an employee who she knew vomited, and Wyatt unilaterally shut down the drive-through and café channels without authorization.[138]

*G. Penn Medicine*

1. Pre-election Meetings

In April, Rivera and Penn Medicine Store Manager Navy Ros held two pre-election group meetings with Penn Medicine store employees in the hallway outside the store. The employees were told to attend the meetings by shift supervisors and they were scheduled to attend them in the DCR. However, employees were neither told they would be disciplined nor suffer adverse consequences if they failed to attend. Each of the meetings was attended by three to five employees while the store remained opened.[139]

During the first week of April, Rivera and Ros met with groups of employees in the hallway outside the store. They handed out the Bargaining Updates and spoke about the consequences if the employees unionized. Rivera and Ros told the employees they would lose benefits and not receive any raises beyond the one that had already been announced if they voted the unionize. They also said that bargaining would begin from the bottom and employees would have to bargain their way up from there. Kelly then asked a question about the Union that neither Rivera nor Ros was able to answer. Topics discussed included the Canadian contract, the Respondent's bargaining proposals in Buffalo, and how to properly fill out ballots. Ros also shared her opinion about the store, and how she advocates for the store with upper management.[140]

---

[136] Tobias conceded that, because Rosa was discharged and worked in a unionized store, he wanted "to have consistency in the application of discipline" and "if [he] had recommended anything less than separation from Ms. Wyatt, that would not have been what the company wanted to do." (1170); (R. Exh. 10; 1147-1155.)

[137] See How far is Stevensville (Maryland) from Philadelphia (trippy.com).

[138] The General Counsel also notes that the Union filed a charge in Case 04-CA-302788 on September 1 alleging that Respondent unlawfully discharge Wyatt in retaliation for her Union activities (GC Exh. 74.) However, I have not considered those allegations here.

[139] Sierra Goode a barista, attended one meeting with coworkers Erica Kelly and William Bildik. She credibly testified that she believed the meeting was mandatory because it was in the schedule and a shift supervisor told her to go to the meeting. (Tr. 211-215; GC Exh. 4.). Ros, on the other hand, did not "recall much" about the meetings and was vague about what she told the employees. She generally recalled telling employees that a petition had been filed, explained what a union was, shared information about the ongoing bargaining in Buffalo and the unionized store in Canada, and mentioned that employees would receive the upcoming raises, regardless of the Union vote. (Tr. 1066-1069.)

[140] Goode's credible testimony regarding this meeting was not disputed by either Ros or Erica Kelly, an employee called by the Respondent. (Tr. 213-215, 219, 1016, 1036-1040, 1065-1069; GC Exh. 4.)

During the second set of group meetings in April, Fable and Ros met with three employees, including Goode. Fable asserted that the employees did not need representation because of the benefits they currently received. The managers stated that all employee existing benefits would be up for negotiation during bargaining. After an employee asked whether employees could negotiate for higher pay instead of certain benefits, Kelly commented that she relied on the existing benefits and would not want to trade them away in exchange for higher wages. Another question was whether employees could bargain for pay increases in place of benefits. Employees also asked about anticipated raises and the timing. The managers replied that the pay increases were coming, although the timing was still up in the air. Beyond that, however, everything else would be held in place until there was a new contract. [141]

2. Ros Meets One-on-One With Employees

In May, shift supervisors instructed employees to go to the back of the house to meet individually with Ros. Once there, Ros handed employees a "Vote and Vote No" handout and urged them to vote "No." She also updated employees about the pay increases for tenured employees announced in October 2021 for Summer 2022. Rose assured employees that they would be receiving the those pay increases, regardless of the election results. If employees unionized, however, she warned that Penn Medicine employees would have to bargain for future raises. Otherwise, they would forgo companywide raises.[142]

*H. 12th and Walnut*

1. Employee Meetings

Until April 4, CJ Johnson solely managed 12th and Walnut. On that date, Dariel Jackson began managing the store with Johnson.[143] After 12th and Walnut store employees filed the last of the representation petitions on April 13, District Manager Les Fable and Jackson held two pre-election meetings. The meetings were held during employees' shifts, and they were told by the store manager or shift supervisor to attend. The store closed for the meetings which were conducted in the store's community room.

[141] Goode's testimony regarding this meeting was generally corroborated by Kelly. (Tr. 216-218, 1016, 1026-1028.)

[142] Kelly did not share details of her meeting with Ros. (Tr. 1016, 1036.) However, Goode provided a credible and detailed rendition of her meeting with Ros: "She "expressed that she did not want us to unionize, and she would prefer if we just said no." (Tr. 217-222.) Ros did not dispute Goode's version and was hesitant about whether she told employees to vote for or against union representation in the one-on-one meetings: "Not really. If they asked, I would share my opinion." When asked if she told employees how to vote, Ros hesitantly replied, "[n]ot really. If they asked, I would share my opinion." (Tr. 1065-1071, 1077-1078.). Goode and Kelly both testified about one-on-one meetings with Ros. Kelly did not testify about the contents of her one-on-one meeting with Ros. (Tr. 218-222, 1016, 1036; GC Exh. 13.)

[143] Contrary to Jackson's recollection that she began working at 12th and Walnut "towards the end" of April, the Respondent's "Punch Records" for time and attendance and scheduling establish that she transitioned there after her training on April 4. (Tr. 910, 1222; GC-28).

The first set of group meetings were held in early April. Former employee Reghan Gill and other employees were instructed to meet there during their shifts.[144] During the meeting, the employees were provided with handouts containing information about employee benefits, including pay raises, and the uncertainties if employees unionized. After reviewing them, Jackson asked the employees if they had any questions about the handouts. In response to Gill's request for an explanation about "unclear" Union benefits, Jackson said that employees' benefits could get "more or less" depending on negotiations with the Union. One such consequence of bargaining was the possibility that employees would be unable to swap and pick up shifts at other stores because of differences in pay and benefits between employees in unionized and nonunion stores. One employee expressed concern over the possible loss of the ability to swap shifts at other stores whenever 12th and Walnut did not meet their availability. In response to another question about the 1% pay raises negotiated by employees at the unionized Canadian store, Jackson asserted that employees would forgo any companywide pay raises during the term of a collective-bargaining agreement. Referring to the Buffalo contract negotiations, she asserted that it was uncertain how long it would take to reach an agreement with the Union.[145]

On May 3, Fable and Jackson met with shift supervisor Kathryn Pfligler to discuss a personal harassment complaint she filed the previous week. About 15 minutes into the conversation, Fable asked if Pfligler was willing to talk about collective bargaining. Pfligler agreed. During that conversation, Fable asked Pfligler what benefits she used. She said she was not comfortable discussing her benefits. After Fable persisted, Pfligler shared that she used the medical and the educational benefits. Fable replied that there were store employees who were misinformed about how benefits would be affected by collective bargaining. He asserted that they risked losing exiting benefits because they would have to "beg" to restore them in negotiations.[146]

On May 11, Jackson held a second pre-election meeting with several employees, including Gill and Pfligler. She told employees to meet in the closed-off business area and closed the store. During the meeting, Jackson distributed the Bargaining Updates and asked the employees if they felt comfortable speaking about their one-on-one meetings the previous week. Pfligler felt obligated to attend because the store was already closed. Jackson then proceeded to read the materials out loud, and at some point, the employees took turns reading portions of the information. Jackson also stated that unionization would make her own job more emotionally difficult because she would be forced to follow and enforce rules more strictly. She also expressed her uncertainty about the impact of unionization.

Employees then began to excitedly discuss the possibilities of bargaining, including having a say in how their workplace was run. Jackson interjected by asking them, "Doesn't it scare you that you could lose all of this?" Pfligler said that they were excited for collective bargaining. Jackson then stated that unionization would make her job more difficult and emotional because

[144] Gil credibly explained that the meeting was mandatory because he was told by his store manager to attend the meeting, was not told it voluntary, and the store was closed during that time. (Tr. 240-242, 246.)

[145] Jackson testified that she referred to bargaining at this meeting as a scenario where one party had a sandwich, the other party had chips, and each wanted a piece of what the other had. However, she did not refute Gill's credible testimony regarding Jackson's specific statements at the meeting. (Tr. 243-253, 265-266, 920-921; GC Exh. 25.)

[146] Pfligler's credible testimony regarding this meeting is undisputed. (Tr. 537-540.)

she would be forced to follow more rigid rules. She explained that while she currently allowed employees grace periods, under a contract she would be compelled to follow stricter rules. Jackson lamented that employees would lose their autonomy and that her job would be made more emotionally difficult.[147]

On May 17, Pfligler was in the back of house performing inventory when Jackson approached her with a stack of papers. Jackson asked Pfligler to look her in the eye, handed Pfligler a flyer that read, "Please Vote and Vote No [on the Union]," and instructed Pfligler to verbally confirm that she read and understood the flyer.[148] Pfligler did as instructed.[149]

2. Dress Code Enforcement

Since at least early March, when Pfligler transferred to 12th and Walnut, the dress code had not been enforced. Employees violated the policy every day by wearing athleisure, partly visible graphic t-shirts, and non-approved shoes.[150] That all changed on April 13, the day the representation petition was filed for 12th and Walnut. That day, Pfligler arrived at work wearing a graphic Union t-shirt. She also carried in additional Union t-shirts and Union pins for employees who wanted them. Pfligler clocked-in and put on her apron, which completely covered the graphic on the shirt.

Shortly thereafter, Jackson approached Pfligler and told her that Johnson wanted to speak with her in the back room. Pfligler replied that she would go there shortly because she was completing some tasks. Jackson told Pfligler, however, to go right away because it was an urgent matter. Pfligler complied and went to meet with Johnson. Johnson asked Pfligler if she was aware that graphic t-shirts were outside the dress code and said he would "write [her] up" if she did not change immediately. Pfligler asked Johnson if he was aware that other employees on the floor were also out of dress code. At the time, one employee was wearing short pants that were too short and, another was wearing sweatpants, and Jackson's shirt, shoes, pants, hair, and earrings were outside the dress code. Johnson said that "two wrongs don't make a right" and Pfligler

[147] I credit the detailed testimony of Gill and Pfligler, corroborated by the handouts, over Jackson's vague and conclusory testimony that she merely answered employees' questions about benefits, including the ability to swap shifts and transfer, if the store unionized. Gill and Pfligler did differ, however, as to whether Jackson read all or only part of the handout. Since Jackson failed to address this point, I relied on Pfligler's version that Jackson read out loud at the outset and the employees then took turns reading portions of the papers. (Tr. 248-250, 540-546, 921; GC Exh. 4.)

[148] Gill conceded that the managers urged the employees the vote and did not tell them how to vote. (Tr. 267-268; GC Exh. 13.)

[149] Jackson did not refute Pfligler's credible and detailed testimony regarding this conversation. (Tr. 547-548; GC Exh. 13.)

[150] Johnson, who transferred to manage another store (Tr. 912.), was not called as a witness. Regardless, I credited Pfligler's testimony regarding the daily dress code violations at 12th and Walnut prior to April 14. (Tr. 533-534.) Jackson, on the other hand, was not credible. Tentative in her responses, she vaguely testified only that "everybody was like pretty okay with the dress code" when she started there on April 4 and "the only things that I had to acknowledge during my time there was just making sure that people weren't like, like athletic wear and graphic tees." There is no credible evidence, however, that Jackson spoke to Pfligler or anyone else about graphic t-shirts or other dress code infractions prior to April 13. In fact, Jackson explained that Pfligler generally never violated the dress code. (Tr. 914-916.)

needed to set a better example because she was in management. Pfligler then asked why Jackson was out of code. Johnson reiterated that "two wrongs don't make a right" and Pfligler needed to set a good example. Pfligler replied that it was not worth the fight, and she would flip the shirt inside out. Instead, Pfligler covered the shirt with a bib dress that matched her apron. Desiring to set a good example so her coworkers did not also get in trouble, Pfligler never wore the shirt to work again.[151]

After assuming sole management of 12th and Walnut, Jackson continued the Respondent's stricter enforcement of the dress code. During the first week in May, employees participated in the store's customary "spirit" week and voted on a different theme for each day. One such day was a "wacky tacky" theme where employees tried to "look the tackiest [they] like." On that day, May 7, Gill went to work wearing red shoes. Jackson, however, told him the shoe color was unacceptable and gave Gill the option of going home and changing or end his shift. Gill clocked out and ended his shift. Jackson also sent a group text message to Pfligler and others informing them that she sent Gill home because he was wearing red shoes. On two other occasions in April and May, Jackson instructed Gill to turn his graphic t-shirt inside out. During another shift in May, Pfligler told Gill to cover the visible portion of the graphics on his shirt with his apron. In each instance, Gill complied and continued working.[152]

## LEGAL ANALYSIS

### I. SECTION 8(A)(1) ALLEGATIONS

#### *A. The Respondent's Pre-Election Meetings*

The complaint alleges that the Respondent coerced employees into attending "captive audience" meetings at the six stores on numerous occasions between February 16 and May 11. Employees were scheduled or told to attend these meetings in groups or told by their managers to sit down for one-on-one conversations. They were paid for attending the meetings, most of which were held during their shifts. A few employees failed to attend or declined to listen to their manager about the Union and the election. Moreover, no one was specifically threatened with reprisal if they refused or failed to listen. However, the vast majority of employees believed that the meetings were mandatory because their managers scheduled or told them to attend and followed up with one-on-one meetings if they failed to attend.

---

[151] It is undisputed that Pfligler was aware of the dress code and the fact that her shirt was not in compliance. She credibly testified, however. that the apron completely covered the graphic portion of the short, which could only be seen if one was standing above and looking straight down through her apron. (Tr. 528-533, 915-916; GC Exh. 5.) Jackson explained that this was unusual because SSV Pfligler generally never violated the dress code.

[152] Jackson's testimony that it was Pfligler who sent Gill home for wearing red sneakers was not credible. (Tr. 917.) The testimony of Pfligler and Gill to the contrary is corroborated by the punch logs, which show only one day in May that Gill clocked less than one hour into his shift—May 7. That day, Gill clocked in at 12:39 p.m. and clocked out at 1:00 p.m., the same time as Jackson. Pfligler, on the other hand, did not clock in that day until 1:27 p.m. Moreover, Jackson did not refute Pfligler's credible testimony about the customary "spirit week" practice at 12th and Walnut. (Tr. 239-240, 535-536; GC Exh. 28.)

Section 8(c) of the Act gives employers the right to educate its employees about labor organizations, collective bargaining, and the Act:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act if such expression contains no threat or force or promise of benefit.

For over 75 years, Board precedent has interpreted Section 8(c) as entitling employers to lawfully compel employees to attend individual or group meetings in which it urges them to reject union representation. *Babcock & Wilcox Co.,* 77 NLRB 577, 578 (1948). See also *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969) (confirming employer's right of free speech to communicate its views on unionization to employees). Free speech, however, does not encompass unlawful speech. Id. at 618. (an employer is "free to communicate to [its] employees any of [its] general views about unionism or any of [its] specific views about a particular union, so long as the not contain a 'threat of reprisal or force or promise of benefit.'")

Recognizing that *Babcock & Wilcox Co.* allows employers to compel employees to attend union-related meetings, the General Counsel urges the Board "to conclude that captive audience meetings regarding the exercise of Section 7 rights are per se unlawful." Arguing that such gatherings are inherently coercive, she asks the Board to reaffirm its earlier ruling in *Clark Bros. Co.*, 70 NLRB 802, 804-805 (1946), where it held it unlawful for an employer to compel employees to attend union-related meetings during work time. In doing so, the General Counsel urges the Board to find it inherently coercive for an employer to infringe on an employee's Section 7 rights to refrain from listening to their employer's communications in two circumstances: when they are (1) convened on paid time or (2) cornered while performing their job duties.

Overruling Board precedent is beyond the role of an administrative law judge. Accordingly, the allegation that the Respondent's mandatory group and individual union-related meetings violated Section 8(a)(1) violation is dismissed.

### *B. Statements at Pre-Election Meetings*

When evaluating whether a threat violates Section 8(a)(1), the Board applies an objective standard to determine whether a remark reasonably tends to interfere with an employee's free exercise of their Section 7 rights. *Divi Carina Bay Resort*, 356 NLRB 316, 320 (2010), enfd. 451 Fed. Appx. 143 (3d Cir. 2011); *Joy Recovery Technology Corp.*, 320 NLRB 356, 365 (1995), enfd. 134 F.3d 1307 (7th Cir. 1998). The test is whether a remark can reasonably be interpreted by an employee as a threat. When applying this test, the Board considers the totality of the circumstances. *Mediplex of Danbury*, 314 NLRB 470, 471 (1994). The test for coercion does not turn on the motivation behind the coercion or on whether it succeeded or failed. *American Tissue Corp.*, 336 NLRB 435, 441-42 (2001) (citing *NLRB v. Illinois Tool Works*, 153 F.3d 811, 814 (7th Cir. 1946). For economic prediction about the effects of unionization to be legal, employers' statements must be "carefully phrased on the basis of objective fact to convey [its] belief as to demonstrably probable consequences beyond [its] control." *BP Amoco Chemical-Chocolate*

*Bayou*, 351 NLRB 614, 617 (2007), quoting *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969).

The Board has long held that a threat can still be coercive even when it is couched in probabilistic language. *Daikichi Sushi*, 335 NLRB at 623-624 (not a defense that employer phrased prediction that the plant might close as a "possibility rather than a certainty"), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Statements may threaten employees by suggesting that the benefits they receive will depend "in large measure on what the Union can induce the employee to restore." *Webco Industries*, 327 NLRB 172 fn. 4 (1998), enfd. 217 F.3d 1306 (10th Cir. 2000), quoting *Plastronics Inc.*, 233 NLRB 155, 156 (1977); cf. *Jefferson Smurfit Corp.*, 325 NLRB, 280, No. 3, (employer's statement that employees could get more or less benefits as a result of collective bargaining was lawful), citing *Somerset Welding & Steel, Inc*., 314 NLRB 829 (1994) (employers are not required to submit "detailed advance substantiation in the manner of the Federal Trade Commission" in order to satisfy the objective fact requirement of *Gissel*).

1. Callowhill

On March 2, Rose drew a comparison to Respondent's unionized Canadian store where employees are unable to pick up shifts at other stores. Rose asked the employees how important it was for them to be able to pick up shifts at other stores. After an employee stated that they depended on the extra income, Rose asserted that if they voted for the Union, they "would not be able to pick up shifts at other stores" and would be "alienate[d]" from other employees at nearby locations By eliciting the admission that employees needed the extra income, and implying that they would lose this income if they voted for the union, Rose threatened retaliation in violation of Section 8(a)(1). See *Holy Cross Health d/b/a Holy Cross Hospital*, 370 NLRB No. 16, slip op. at 1 fn. 3 (2020) (employer unlawfully threatened that if employees unionized the employer's leave policies might become less generous and its shift scheduling might become less flexible). Additionally, Rose's comparison to the Canadian store inaccurately implied that if Callowhill unionized, employees would suffer the same consequences.. This statement was objectively false, and therefore not "carefully phrased" as required at *BP Amoco Chemical-Chocolate Bayou*, 351 NLRB 614, 617 (2007); *Metro One Loss Prevention Services Group*, 356 NLRB 89, 89 (2010) (employer unlawfully threatened that an employee's pay rate could get worse if the union came in); cf. *Jefferson Smurfit Corp.*, 325 NLRB 280, 280 fn. 3 (1998) (employer's statement that benefits "could go either way as a result of collective bargaining" was lawful).

On March 12, Conway and Rose provided an overview of current employee benefits. Rose also reported that he had more information about the unionized store in Canada, which was that the union dues were hardly covered by the economic gains employees received. Rose reasoned that economic gains were "unlikely" to come from unionizing Callowhill. Rose also said that bargaining with the union would begin from "ground zero," and so all the benefits discussed during that meeting would have to be bargained for with the Union. By citing the Canadian store's contract provision as an example of what lay ahead, Rose unlawfully implied that employees would not benefit economically from unionizing. *BP Amoco Chemical-Chocolate Bayou*, 351 NLRB at 617. Additionally, his statement that bargaining with the union would force employees to begin from "ground zero" also violated Section 8(a)(1). *Webco Industries*, 327 NLRB 172, 172 fn. 4 (1998) (employer's statement that bargaining would "start from ground zero" unlawfully

created the impression that the best employees can hope to attain through bargaining is to induce the employer to give them what they already have).

2. 9th and South

On March 2, Dengel told 9th and South employees that she aligned with unions politically but did not feel that one was right for the store. Fable then said he wanted employees to have the facts before making any firm decisions. He explained that outcomes in bargaining would be uncertain, that you could lose or gain benefits, and compared collective bargaining to a casino. On March 9, the managers distributed a brochure listing employees' current benefits and handouts about collective bargaining and the Union's structure.

An employer may assert that collective bargaining may have uncertain results, and that employees may "lose or gain benefits." However, by comparing the bargaining table to a casino, the obvious implication was that employees could lose many, if not, all of their current benefits. This implies false certainty not carefully reflective of objective facts. *Metro One Loss Prevention Services Group*, 356 NLRB 89; *BP Amoco Chemical-Chocolate Bayou*, 351 NLRB at 617.

On April 6, Dengel and Fable handed employees the Bargaining Updates, which described contract negotiations in Buffalo in a manner that suggested that collective bargaining was going very poorly. Coupled with the managers' previous unlawful statements regarding the uncertainties in the bargaining process, the discouraging Bargaining Updates violated Section 8(a)(1) by threating that 9th and South employees would encounter the same fate. *Mautz Paint & Varnish Co.,* 117 NLRB 496, 508 (1957) (context in which statements are made indicated that employer sought to "induce employees to forgo union representation").

3. Penn Medicine

In the two April meetings held by Rivera, Fable and Ros, the managers spoke about the Union, the election process, the ongoing bargaining in Buffalo, and the unionized store in Canada. They also told employees they would lose benefits and not receive any raises beyond the one already announced if they voted the unionize. With respect to the bargaining process, they also claimed that bargaining would begin from the bottom, and the employees would have to bargain their way up from there.

In May, Ros instructed shift supervisors to send employees to the back of house to meet with her one-on-one. There, Ros handed employees a "Vote and Vote No" handout urging employees to vote against the Union. Ros also told the employees that the raise announced in October 2021 might be the only one she could promise because once they unionize everything would have to be negotiated with the Union. By implying that the employees would not be eligible for raises after unionization, Ros unlawfully threatened Goode under Section 8(a)(1). The managers statements at the April and May meetings about the starting point in bargaining, like the ground-zero statements, violated Section 8(a)(1). *BP Amoco Chemical-Chocolate Bayou*, 351 NLRB at 618 (employer unlawfully asserted that bargaining would start from zero and implied that future raises might not be forthcoming).

4. 12th and Walnut

On the following four occasions at 12th and Walnut, the Respondent continued its campaign of misinformation and coercion in violation of Section 8(a)(1). *BP Amoco Chemical-Chocolate Bayou*, 351 NLRB at 618.

In an early April meeting, Jackson distributed handouts illustrating the uncertainties with respect to benefits and pay increases if employees unionized. She told the employees that they could get "more or less" depending on negotiations with the Union, possibly be unable to swap and pick up shifts at other stores because of differences in pay and benefits between employees in unionized and nonunion stores, and forgo any companywide pay raises during the term a collective-bargaining agreement. Finally, referring to the Buffalo contract negotiations, she stated that it was uncertain how long it would take to reach an agreement with the Union.

On May 3, Fable and Jackson changed the conversation in a meeting convened to deal with Pfligler's harassment complaint to one about collective bargaining. After Pfligler agreed to engage in such a discussion, Fable said that employees were misinformed about how existing benefits would be affected by collective bargaining and risked losing them because they would have to "beg" to restore them in negotiations.

On May 11, Jackson distributed the Bargaining Updates, read a portion of the materials out loud and, at some point, had the employees do the same. Jackson also stated that she would be forced to follow and enforce rules more strictly if the store unionized and expressed the uncertainties of unionization. She explained that while she currently allowed employees grace periods, under a contract she would be compelled to follow stricter rules.

On May 17, Jackson handed Pfligler a flyer that read, "Please Vote and Vote No [on the Union]," and instructed Pfligler to verbally confirm that she read and understood the flyer. Pfligler complied. [153]

5. 34th and Walnut

On the following four occasions at 34th and Walnut, the Respondent continued its campaign of misinformation and coercion in violation of Section 8(a)(1). *BP Amoco Chemical-Chocolate Bayou*, 351 NLRB at 618.

On March 2, Rivera told 34th and Walnut's employees that if they unionized, the relationship between management and employees would become more "business-like." As an example, he suggested that management would not respond as quickly to a threat in the store if the Union represented employees. Rivera then discussed how things were going at the unionized store in Canada and compared it to 34th and Walnut.

On March 9, Rivera played a video for employees laying out all the benefits currently offered by the company. He asserted that any negotiations with the Union would start "from the

[153] Jackson did not refute Pfligler's credible and detailed testimony regarding this conversation. (Tr. 547-548; GC Exh. 13.)

ground up" and compared bargaining to a shopping bag of existing benefits that would be dumped on the negotiating table and the Union would have to negotiate to get them back into the bag. Rivera also stated that employees of the unionized Canadian store were unable to borrow employees or pick up shifts at other stores in the area during the term of their 3-year contract. Rivera claimed that the Canadian store had trouble hiring because wages were lower than others in the area. *Webco Industries*, supra.

On March 16, Rivera said that employees could be compelled to go on strike by the Union and that employees could lose their health insurance if they went on strike.

On March 23, Rivera said that transferring would be possible in the store unionized, but being able to pick up shifts at other stores and borrow employees was complicated and unlikely.

6. 20th and Market

On February 17. Rivera violated Section 8(a)(1) again by stating that employees would be expected to begin paying dues immediately, bargaining would begin at "ground zero," and employees would have to bargain for the benefits they already enjoyed. He said that unionization could affect the store manager's ability to help employees on the floor and borrow employees from other stores. Employees would not be allowed to transfer or pick up shifts at other stores due to differences in pay rates at unionized and non-unionized stores. *Webco Industries*, supra.

On February 24, Rivera reiterated that bargaining would start at ground zero and take years, borrowing employees would be an issue and that the store manager may not be able to help out on the floor. Finally, on March 10, Rivera shared information about the unionized Canadian store but no further details were provided.

*C. The Respondent's Maintenance and Enforcement of the How We Communicate Policy*

The complaint alleges that the Respondent violated Section 8(a)(1) by maintaining and enforcing its overly broad "How We Communicate" policy, and applying the policy to restrict employees' union and protected concerted activities, and discharge Rosa. The policy states in pertinent part:

> Partners are expected to communicate with other partners and customers in a professional and respectful manner at all times. The use of vulgar or profane language is not acceptable.

In *Stericycle*, 372 NLRB No. 113, slip op. at 1-2 (2023), the Board recently abandoned the application of *Boeing Co.*, 365 NLRB No. 154 (2017), as the standard to determine whether work rules that do not explicitly restrict protected concerted activity are "facially unlawful under Section 8(a)(1) of the Act."[154] The new approach "builds on and revises" the Board's earlier test in

[154] The Board remanded the allegations that the employer violated Section 8(a)(1) by maintaining its rules governing personal conduct, conflicts of interest, and confidentiality of harassment complaints to this administrative law judge for appropriate action as set forth in the decision. Id. at 15.

*Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) by requiring proof that "an employee could reasonably interpret the rule to have a coercive meaning," regardless of whether "a contrary, noncoercive interpretation of the rule is also reasonable." The "employer's intent is also immaterial." The rule will be deemed "presumptively unlawful" if the General Counsel meets her burden. However, the rule will be found lawful to maintain if the employer rebuts that presumption "by proving the rule advances a legitimate and substantial business interest and that the employer is unable to advance the interest with a more narrowly tailored rule." Id at 2.

It is undisputed that the policy is a facially neutral work rule. Although the parties briefed this case based on *Boeing* as controlling precedent, their arguments fully address the integral elements of *Stericycle*—employees' reasonable interpretation of the rule and the Respondent's business interests. Here, employees reasonably interpreted the rule to prohibit Section 7 activity because store managers applied it to restrict such conduct. Two instances stand out. First, Dengel issued written warnings to Barton and Clark because they criticized her level setting of the dress code during a private conversation at work. Second, Rosa was discharged, in part, because she used foul language in a private social media group exchange refuting Lewis's language in kind complaining about a staffing issue at work. Accordingly, while language that is "vulgar" and "profane" is almost always apparent, "respectful" and "professional" language is not. Such wording is overly broad, vague, and can reasonably be construed to intrude on Section 7 communications, as noted in the aforementioned examples above.

As the policy is presumptively unlawful, the burden shifted to the Respondent to demonstrate a legitimate and substantial business interest. It advances one purpose for maintaining and enforcing it—the legality of work rules requiring that employees abide by "basic standards of civility." See *BMW Mfg. Co.*, 370 NLRB No. 56, slip op. at 4 (2020) (employer did not violate Section 8(a)(1) by maintaining a civility rule, a confidentiality policy, a no-recording provision, and a non- disparagement rule). Although maintaining basic standards of civility is a legitimate and substantial business interest in the workplace, as the facts here show, it is overly broad, vague, and is susceptible to application against Section 7 activity, especially during nonwork time. Moreover, the Respondent failed to show that it is unable to advance those interests with a "more narrowly tailored rule."

In these circumstances, the Respondent's maintenance and enforcement of the How We Communicate Policy violated Section 8(a)(1) of the Act.

*D. Denial of Union Representation During Investigation*

Employees in a Union-represented workplace have a right, upon request, to have a Union representative present during an interview that the employee reasonably believes may lead to discipline. *NLRB v. J. Weingarten, Inc.*, 420 (U.S.) 251, 267 (1975). On June 11, Grubbs approached Rosa, asked her about the social media exchange with Lewis, told her there would be an investigation, and she would be contacted by someone from Partner Resources. Rosa requested Union representation in the investigation and Grubbs replied that *Weingarten* rights did not apply to investigatory processes. This statement was false—they do apply to investigations—and coerced Rosa in the exercise of her Section 7 rights in violation of Section 8(a)(1).

## II. THE SECTION 8(3) ALLEGATIONS

### *A. Stricter Enforcement of Rules*

It is unlawful for an employer to enforce rules more strictly in response to union activity. *Dynamics Corp. of America*, 286 NLRB 920, 921 (1987), citing *Keller Mfg. Co*., 237 NLRB 712, 713 fn. 7 (1978), *and Hudson Oxygen Therapy Sales Co*., 264 NLRB 61 fn. 2 (1982) (employer unlawfully issued warnings as the result of stricter enforcement of policies in retaliation for employees' support of the union). Where such a violation is found, the Board orders that all discipline issued pursuant to the stricter enforcement be rescinded and expunged. Id at 921.

Here, employees from the 34th and Walnut, 20th and Market, 9th and South, and 12th and Walnut Stores, credibly testified that Respondent began enforcing its dress code more strictly after the filing of the election petitions—often to bar employees from wearing Union shirts. According to the witnesses, the dress code was either not enforced, or only enforced in the case of egregious violations—such and health and safety issues, or obscene content. The wearing of graphic t-shirts was not usually prohibited prior to the unionization campaigns.

Accordingly, Respondents' more strict enforcement of its rules in response to the organizing campaign violated Section 8(a)(3) and (1) of the act. See *St. John's Community Services of New Jersey*, 355 NLRB 414 (2010) (decision to enforce a work rule more strictly is unlawful if taken in response to union activity); cf. *Schrock Cabinet Co.*, 339 NLRB 182, 183 (2003).

### *B. Rosa's Discharge*

In determining whether an employer unlawfully discriminated against an employee to hinder or promote union membership, the Board applies the test outlined in *Wright Line*, 251 NLRB 1083 (1980). The General Counsel must make a prima facie case that the employee's protected activity was a motivating factor in the adverse employment action. The General Counsel must show factors such as union or other protected activity by the employee, employer knowledge of that activity, and antiunion animus on the part of the employer. Once the General Counsel makes that showing, the Respondent bears the burden of showing that the same adverse action would have been taken in the absence of the protected conduct. *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004), citing *Wright Line*, supra at 1089. The causal link may be established by establishing direct evidence or "inferred from circumstantial evidence based on the record as a whole." *Id.* (quoting *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003).

Circumstantial evidence which might support a finding of discriminatory intent might include the timing of the adverse action in relation to the employee's protected activity, the presence of other unfair labor practices, disparate treatment of the discriminates, the employer's perfunctory investigation, shifting defenses by the employer, and evidence of pretext.

Rosa was a prominent leader of the Union organizing committee and identified herself to Grubbs as a member of the organizing committee. Rosa also was featured in an article in *The Nation* and authored an editorial in *The Philadelphia Inquirer.* A week after the ballots were counted in favor of the Union, Grubbs told Rosa that she was not entitled to *Weingarten* rights

during investigative processes. Grubbs' acknowledgment of Rosa's *Weingarten* rights, even while she denied their applicability in an investigative hearing, constitutes an admission of recognition of Rosa's membership in the Union. The Respondent had actual and constructive knowledge of Rosa's Union activity.

The Respondent has a rich history of antiunion animus. The Board and numerous administrative law judges have found that the Respondent has violated Section 8(a)(3) on numerous occasions by disciplining and discharging Union supporters or even by shutting down stores entirely in retaliation for Section 7 activity. Moreover, Grubbs' reaction to Rosa's request for *Weingarten* rights reveals further animus, and the subsequent investigation into Rosa shows evidence of disparate treatment as well. Grubbs opened a Partner Resource case file to record Rosa's behavior as "weird" and "hostile." The Respondent also disregarded its customary practice by declining to collect a statement from Rosa in order to get her "perspective."

The Respondent's policies state that the purpose of corrective action is to give the employee "a reasonably opportunity to re-establish an acceptable level of performance or behavior." Rosa was a high performing employee with a perfect employment record who had already been promoted to shift supervisor. The Respondent used the disciplinary process not to work constructively with Rosa, but to build a case against her. There is not a scintilla of credible evidence in the record that the Respondent pursued a course of corrective action other than discharge. Indeed, her manager's initial communication with partner resources indicated her desire to terminate Rosa.

The Respondent contends that the investigation into Rosa, while it did not include a direct statement from her, bears no evidence of its attempt to manipulate the result of the investigation or to engage in "sham fact gathering." *International Baking Co.*, 348 NLRB No. 76, slip op, at 35 (2006) (although employer did not interview every witness, employer's investigation was not sufficiently cursory as to indicate antiunion animus). However, there is substantially more evidence of union animus in this case than in *International Baking*. In that case, there was neither suspicious timing, evidence of ongoing union animus, or a departure from past practice. Id. On the contrary, although interviewing the subject employee was not part of its pre-existing investigation process, the employer in *International Baking* gave the employee the opportunity to tell his side of the story anyway. Id. at 71.

The Respondent contends that an employer does not need to interview the subject of the investigation for its efforts to be considered adequate. *Wal-Mart Stores, Inc.*, 349 NLRB 1095, 1104 (2007) (interviewing the subject employee is not a requirement for an adequate investigation). *Walmart Stores, Inc.* is inapposite, however, because the employer there conducted an adequate investigation even though that step was not part of its regular disciplinary process. Here, the cursory nature of the Respondent's investigation was clear. It failed to take a statement from Rosa when its ordinary process would have been to do so. Furthermore, in *Walmart,* the employee engaged in misconduct for months, and was repeatedly reminded of his noncompliance with company policies. The employer's decision failure to give the employee an opportunity to explain himself was not unreasonable given the many opportunities he had in the past. By contrast, Rosa had never been warned about her behavior in the past, because she was a stellar employee.

The Respondent's historical enforcement of the How We Communicate and illness policies establishes that it treated Rosa disparately. First, there is no evidence that the Respondent discharged anyone for violating the illness policy prior to discharging Rosa. One employee, Phoebe Wyatt was discharged for violating the illness policy at a store more than 100 miles from Philadelphia. However, that violation occurred on August 25, *after* Rosa was discharged. Wyatt's conduct was far more serious than Rosa's failure to send an employee home because she did not believe the employee to be sick and, instead, told the employee to call the store manager. In Wyatt's case, she ignored her store manager's instruction to send the sick employee home and then closed the store without authorization.

Prior to Rosa's discharge, the Respondent's practices reveal that two employees received only final written warnings for more serious violations of the illness policy. In January, Benjamin Diaz was disciplined for coming to work from COVID isolation while still symptomatic. He lied and reported on the COVID virtual check that he was symptom free and proceeded to work for a while until the manager noticed and sent them home.

In March, Nina Crews-Sargent engaged in similar misconduct. She falsified her answers on the COVID virtual coach and proceeded to work while symptomatic. Additional factors considered in the discipline were "ongoing" time and attendance violations—17 to be exact. However, most suspiciously and without explanation, the store manager vacillated and did not issue the discipline to Crews-Sargent until July 28—four days before Rosa's discharge.

The Respondent's disciplinary practices regarding the How We Communicate policy prior to July 2 also illustrate the disparate treatment applied to Rosa. In the two cases where the employees were discharged, the misconduct was more serious and occurred while the employee was on duty. Greta Smith was discharged for violating a communications-related policy—Mission & Values. She used profanity in the presence of customers present and bolted off the floor and into the back room where she engaged in a yelling match with a shift supervisor. Unlike Rosa, who's disciplinary was spotless prior to July 2, Smith was previously issued documented coaching and a written warning for losing her composure.[155] Benjamin Diaz was discharged two months after being issued a final written warning for violating the illness policy. In that instance, Diaz cursed and physically threatened at the store manager when she tried to coach them for forgetting about their shift.

Other cases where the discipline was short of discharge also reveal the disparity in which Rosa was treated.[156] Madeline Levans was only issued a final written warning for cursing in front of customers and became belligerent when her store manager tried to coach her about her behavior. Levans' misconduct while working was clearly more egregious than Rosa's private social media group comment about Lewis during nonwork time.

[155] Although not specifically mentioned, Rivera clarified that Smith's violation of the Respondent's "Mission and Values" was based on the How We Communicate Policy. (R. Exh. 50-51; Tr. 842-847, 850-854, 856-858.)

[156] As previously explained, I did not find that Connor Lisher was issued any discipline for foul language to coworkers.

In contrast with Rosa's social media comment during nonwork time, Miyah Smith took promotional videos while working in the store and displayed them on social media. The videos showed her pouring milk into a cup with the words "no bitches" written on it. Notwithstanding Tobias' suggestion that the store manager consider termination, the latter was inclined to issue a final written warning. However, after the store manager had a discovery conversation with Smith, she resigned before discipline issued.

Finally, the cases involving criticism of a store manager by Maddie Barton and Bailey Clark would have been comparable to Rosa's retort to Lewis's criticism of her—but for the fact that they involved speech during work time. Their manager was inclined to issue documented coachings for gossiping about her application of the dress code the week before. Fable, however, instructed her to issue written warnings. Moreover, Rosa's did not disparage her store manager like Barton and Clark did. Although the store was obviously part of the story, the verbal tussle was during nonwork time between two employees in a small private social media group of coworkers from the store for the purpose of engaging in Section 7 and other communications. The final distinction is that while Barton and Clark were both disciplined for engaging in inappropriate communication, Lewis, the other half to Rosa's predicament, was never even considered for discipline. The Respondent asserted that Lewis's foul rant did not refer to Rosa's refusal to send him home. However, even a barebones investigation would have at least considered whether Lewis was lying about being ill and the context of their social media outburst, which clearly related to the incident with Rosa at work.

In conclusion, Rosa, who's outspoken advocacy for the Union was widely reported in the news media on February 16 and May 1, had an unblemished personnel record. On June 3, the same day that the Union was certified to represent 20th and Market employees, Grubbs opened a case file on Rosa at Rivera's direction after Rosa accused Grubbs of hostility, treating her differently, badmouthing her to other employees, and requesting union representation. During her testimony, Grubbs did not dispute or at least address those allegations, casting suspicion on the reasons for opening a file in the first place. On June 8, immediately after Lewis complained to her about the social media tiff with Rosa on June 4, Grubbs connected with Rivera and Tobias. On June 11, Grubbs held a "quick" conversation with Rosa and denied her request for representation on the grounds that *Weingarten* rights did not apply to an investigation. She then led Rosa to expect that she would a call from Partner Resources, which never came. On June 16, without reaching out to Rosa to hear her side of the story, Tobias communicated the decision to separate Rosa. Thin on disciplinary precedent regarding the illness policy, the Respondent deferred until Crews-Sargent was issued a final written warning on June 28. On July 2, one month after the Union was certified, Rosa received the notice of separation.

The totality of the circumstances demonstrates that Rosa's protected concerted activity was a motivating factor in the Respondent's decision to terminate her in the midst of an election vote at her store. See *Cardinal Home Products*, 338 NLRB 1004, 1010 (2013). In these circumstances, the Respondent unlawfully discriminated s in violation of Section 8(a)(3) and (1).

Additionally, Rosa was discharged, in part, because she engaged in protected concerted activity on social media during nonwork time, which did not in any way interfere with the Respondent's operations, and Lewis complained about it to Grubbs. There is no doubt that her

language was vulgar or profane, or that one could reasonably it as unprofessional or disrespectful. The fact remains, however, that the Respondent latched onto Lewis' complaint about this nonwork communication because Rosa mentioned the store, specifically, an issue about staffing—a term and condition of employment. In these circumstances, the Respondent also violated Section 8(a)(1). See *Continental Group, Inc.,* 357 NLRB 409, 412 (2011) (employer can avoid liability in such a situation if "the employee's conduct actually interfered" with its operations and that was the sole reason for the discipline).

*C. Reduction of Hours of Operation at 34th and Walnut*

The complaint alleges that the Respondent reduced the hours of operation of at 34th and Walnut between May 9 and September 11, and again between July 18 and September 5, in retaliation for employees' Union activities. The Respondent denies the allegations and attributes the changes to callouts and chronic understaffing at 34th and Walnut.

The Respondent's recorded hours of operation since January 2020 certainly showed fluctuations for short periods of time. Even during the height of the COVID-19 pandemic, shorter hours and store closure due to callouts and understaffing would last only as long as it took to borrow employees or otherwise restore the staffing—usually a couple of days at most. However, during the critical period before the election, Rivera, who had already exhibited union animus in his statements at pre-election meetings and enforcement of the dress code, took the unusual step of reducing hours of operation for the long term at 34tth and Walnut. He did so without any supporting data, which would have informed him that the store was operating at fairly regular hours of operation leading up to May 6. Thus, from May 6 to July 13, 34th and Market operated 10 hours on weekdays and 7 hours on weekends. From July 14 to September 11, the store reduced hours even more, with many days in which the store was only open for a few hours. Moreover, Rivera's explanation that the changes were undertaken so that the Respondent could get the store sufficiently staffed and increase employee availability requirements was pretextual because the ploy did not work, as demonstrated by the plummeting operational hours after May 6.

The Respondent also contends that the changes did not adversely impact employees because Rivera noted that employees could pick up shifts at other stores to make up for lost hours. That argument misses the point. While employees could pick up shifts at other stores, such an opportunity relied on an uncertain process that required the agreement of the other store's manager to take them on. The reduction of employees' regularly scheduled work hours at their home store was an adverse development because it deprived them of a key term of employment that they had come to rely on.

It also points to two individual cases to support this argument—Low, who subsequently took a second job and went on short term disability, and Fry, who anticipated reducing his schedule anyway after getting a second job—as evidence that employees were not adversely impacted. However, Rivera conceded as much when he failed to deny Low's comment that the change would deprive some employees of much needed income by suggesting they pick up shifts elsewhere.

In conclusion, Rivera's drastic decision on May 4 to reduce hours of operation at 34th and Walnut—where the tally of votes on May 25 would be unanimous in favor of unionization—was

motivated by strong union animus and discriminated against the store's employees. Moreover, the Respondent failed to show that the unlawful reduction in hours would have occurred regardless of its unlawful motivation. *Van Vlerah Mech., Inc*., 320 N.L.R.B. 739, 746 (1996) (where there is a strong showing of discriminatory motivation, the employer's rebuttal burden is substantial). In this circumstances, the Respondent's reduction in store hours between May 9 and September 11 discriminated against the store's employees in violation of Section 8(a)(3) and (1). *Somerset and Valley Rehabilitation and Nursing Center*, 358 NLRB 1361, 1363-1364 (2012) (unlawful for an employer to reduce employee's hours of work if the reduction was motivated by union animus).

*D. Chabrak's Constructive Discharge*

There are two elements to a constructive discharge analysis. First, "the burdens imposed on the employee must cause, and be intended to cause, a change in working conditions so difficult or unpleasant as to force the employee to resign." Second, "the burdens must have been imposed because of the first element will be established if the employer "reasonably should have foreseen" that it should have thought the employee would quit. *American Licorice Co.*, 299 NLRB 145, 148 (1990), citing *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976). The Board has found that it is reasonably foreseeable that elimination of a reduced-hours schedule would create a hardship sufficient to result in resignation. *North Carolina Prisoner Legal Services*, 351 NLRB at 470, citing *Yellow Ambulance Services*, 342 NLRB 804, 807 (2004) (requiring an employee to choose between work and family obligations is sufficiently burdensome to support a finding of constructive discharge).

The proof established that Chabrak was constructively discharged. The Respondent exhibited widespread union animus toward the organizing campaign and knew that Chabrak was a leading supporter of that effort. Evidence of the animus toward her union activity began almost immediately after the petition was filed, when Rivera retaliated against the union activity by pressuring Pettinato to unilaterally increase employees' availabilities. In the course of doing so, Rivera mentioned only one employee—Chabrak. He repeatedly urged Pettinato to schedule Chabrak to work additional hours beyond her availability, while Delaney Nordstrom, an employee who worked only two five-hour shifts a week, went unmentioned. Pettinato refused.

As soon as he was gone, Rodriguez arrived in early April as a placeholder and began addressing scheduling and availability. She quickly implemented and enforced a requirement that employees provide a three-day minimum availability. While she honored cases where Pettinato had approved two-day minimum availabilities, she did not do it for Chabrak. Rodriguez conceded that the system was replete with inaccurate availabilities and asked which of two listed availabilities were correct. Chabrak told her that the two-day availability was correct, had been approved by Pettinato, and reflected the schedule she had been working. Rodriguez disagreed and insisted Chabrak needed to increase her availability to three days a week.

The Respondent knew that Chabrak had a full-time job and reasonably foresaw that requiring her to increase her availability beyond two days would force her to resign. On April 20, Rodriguez told Chabrak would not be scheduled beyond May 1 unless she agreed to three-day minimum availability. On April 24, Rodriguez and Wilmer exchanged comments about the tense relationship that had developed with Chabrak. In response to Wilmer's comment that

Chabrak was rude, Rodriguez remarked, "Don't worry. She's on my list. "As a result of the newly implemented and enforced three-day minimum availability requirement, Chabrak was never notified of a scheduled shift after May 1.

In conclusion, the Respondent knew of Chabrak's union activities, exhibited strong animus against the organizing campaign and her role in that effort, retaliated by implementing and enforcing a minimum three-day availability that it reasonably foresaw would cause Chabrak to resign. In these circumstances, the Respondent discriminated against Chabrak for engaging un union activity in violation of Section 8(a)(3) and (1).

## III. THE SECTION 8(A)(5) ALLEGATIONS

### *A. Rosa's Discharge*

The complaint also alleges that the Respondent violated Section 8(a)(5) of the Act by terminating Rosa without notice to the Union or an opportunity to bargain. In *NLRB v. Katz*, 369 U.S. 736 (1962), the Supreme Court held that, upon commencement of a bargaining relationship, employers of union-represented employees are required to maintain the status quo, i.e., refrain from making a material change regarding any term or condition of its employees' employment that constitutes a mandatory subject of bargaining, unless notice and an opportunity to bargain regarding a contemplated change to the status quo is provided to the union. Accordingly, an employer may not change policies of employment, including those effectuated through past practice, without giving the union notice and an opportunity to bargain.

Relying on the Board's decision in *800 River Rd. Operating Co., LLC, D/B/A Care One*, 369 NLRB No. 109 (2020), the Respondent contends that *Katz* does not require employers to bargain over discretionary discipline that is consistent with an employer's past policies and practice. Contrary to the Respondent's argument, however, *Care One* did not give it, as the employer of union-represented employees, the right to suddenly deviate from past disciplinary practices, as it did here. As previously explained, the Respondent unilaterally departed from its past disciplinary practices and administered a disparate level of discipline to Rosa as the result of a cursory, one-sided, and unlawfully motivated investigation.

As the Board noted in *Care One,* "the correct analysis under *Katz* must focus on whether an employer's individual disciplinary action is similar in kind and degree to what the employer did in the past within the structure of established policy or practice." Id. slip op. at 5. The discipline applied to Rosa was neither similar in kind nor degree to how the Respondent treated rules violators prior to July 2. In the circumstances, the Respondent also violated Section 8(a)(5) and (1) by failing to notify the Union and give it an opportunity to bargain over Rosa's discipline.

### *B. Changes to Hours of Operation at 34th and Walnut*

The complaint also includes an additional Section 8(a)(5) allegation that the Respondent unilaterally reduced the hours of operation at 34th and Walnut between July 18 and September 5 without notice to the Union and an opportunity to bargain. During that period, the Union was

certified on June 3 as the exclusive collective-bargaining representative of the store's baristas and shift supervisors.

The Respondent contends that it was unilaterally entitled to reduce store hours without notice to and bargaining with the Union because it was merely taking actions consistent with past operational practice. *Raytheon Network Centric Systems,* 365 NLRB No. 161, slip op. at 5 (2017), citing *Katz* at 369 U.S. at 746 (viewing the status quo "dynamically," no violation where the employer simply follows a well-established past practice and notify and bargain with the union).

The Respondent's position relies on two arguments—its past practices and its entrepreneurial right to alter hours of operation at 34tth and Market. Both fall flat. The record did establish the Respondent's practices since 2020 of reducing hours on a short-term basis (a couple of days at time)—even during the height of the pandemic. As previously concluded, however, the Respondent ignored longstanding past practices at 34th and Walnut after the Union's certification on June 3 and retaliated because employees engaged in Union activity by reducing the store's hours of operation in the long-term, between July 18 and September 5. *Mackie Auto Systems*, 336 NLRB 347, 349 (2001) (employer obligated to refrain from making unilateral changes during bargaining for a first contract); see also *Porta-King Building Systems*, 310 NLRB 539, 543 (1993), enfd. 14 F.3d 1258 (8th Cir. 1994 ((employer's past practices prior to the union certification do not relieve it obligation to bargain over changes in wages, hours, and other terms and conditions of employment); cf. *KDEN Broadcasting Co.,* 225 NLRB No. 6, slip op. at 35 (1976) (schedule and hour changes consistent with employer's past practice lawful)

Nor was the change in hours of operation the type of core entrepreneurial decision endorsed by the Board in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981): (1) management decisions that have only an "indirect and attenuated impact" on the employment relationship; (2) management decisions that delve exclusively into the employer/employee relationship, such as production quotas or work rules, necessitate bargaining; and (3) decisions that impact employment where the focus is solely economic profitability, akin to a decision whether to be in business at all, and not primarily about conditions of employment. Id. at 676-677. In this case, the changes to hours of operation were neither indirect nor attenuated—they directly affected employees. Nor did the decision impact the individual relationship between the Respondent and its employees, The reduction in operating hours was a sweeping decision that affected multiple employees, especially openers and closers. Finally, the Respondent's decision was not motivated by economic considerations. The vague rationale for the long-term decision, which I did not find credible, was to bolster staffing so it could provide "Starbucks 2+ service."

In these circumstances, the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing store hours without providing the Union with notice or an opportunity to bargain over the changes and their effects.

## CONCLUSIONS OF LAW

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

(a) Threatening employees with loss of benefits if they continue to support the Union or if they selected the Union as their bargaining representative;

(b) Threatening employees with denial of wages increases if they selected the Union as their bargaining representative;

(c) More strictly enforcing rules and policies, including the Dress Code & Personal Appearance policy, that it did not strictly enforce prior to the filing of a representation petition;

(d) Maintaining rules which employees would reasonably construe to discourage engaging in union or other protected concerted activities, including specifically the How We Communicate policy contained in Respondent's Partner Guide;

(e) Applying its How We Communicate policy to restrict employees in the exercise of their Section 7 rights;

(f) Threatening employees that they will not be scheduled to work if they do not meet a minimum availability requirement, because they engaged in union activities or because they support the union;

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

(a) Reducing store operating hours because employees engaged in union activities or because they supported the union;

(b) Constructively discharging employees by enforcing a new minimum availability requirement and/or by reducing the availability of employees' regularly scheduled shifts by reducing store operating hours because employees engaged in union activities or because they support the union; and

(c) Disciplining, discharging employees, or otherwise taking adverse action against employees because they engaged in union activities or because they support the union.

5. The Respondent violated Section 8(a)(5) and (1) by:

(a) Failing and refusing to bargain collectively with the Union by reducing store operating hours, imposing discretionary discipline, or implementing other terms and conditions of employment without affording the Union notice and an opportunity to bargain; and

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

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices at the following stores—9th and South, Callowhill, 20th and Market, 34th and Walnut, 12th and Walnut, and Penn Medicine (the Petitioned Stores), I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to cease and desist from threatening employees with loss of wages and benefits if they engage in union activity, more strictly enforcing rules and policies that it did not strictly enforce prior to the filing of a representation petition, maintaining rules which employees would reasonably construe to discourage engaging in union or other protected concerted activities, applying its How We Communicate policy to restrict employees in the exercise of their Section 7 rights, threatening employees that they will not be scheduled to work if they do not meet a minimum availability requirement, because they engaged in union activities or because they support the union, reducing store operating hours because employees engaged in union activities, constructively discharging employees by enforcing a new minimum availability requirement and/or by reducing the availability of employees' regularly scheduled shifts by reducing store operating hours because employees engaged in union activities, disciplining, discharging employees, or otherwise taking adverse action against employees because they engaged in union activities or because they support the union, and failing and refusing to bargain collectively with the Union before altering terms and condition of employment without affording the Union notice and an opportunity to bargain.

The Respondent shall be ordered to take the following affirmative action: rescind the overbroad How We Communicate policy and notify employees it has been rescinded; bargain with the Union at 34th and Walnut and 20th and Market before unilaterally changing terms and conditions of employment; make whole employees at 34th and Walnut for losses suffered by reason of the unlawful changes to store operating hours, plus interest, including reasonable consequential damages; and rescind all discipline issued pursuant to its stricter enforcement of the dress code.

Furthermore, the Respondent, having discriminatory discharged employee Alexandra Rosa and constructively discharged employee Alexandra Chabrak, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky Medical Center,* 356 NLRB No. 8 (2010).

In addition, in accordance with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall compensate the aforementioned discriminatees for any direct or foreseeable pecuniary harms incurred as a result of the unlawful adverse actions against them, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons,* supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

The Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatee(s) for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than one year, *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatee(s) for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than one year, *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

Furthermore, based on the Respondent's proclivity for violating the Act,[157] the cease-and-desist order will be broad, *Hickmott Foods*, 242 NLRB 1357 (1979), and extraordinary in nature. See *Amerinox Processing, Inc.*, 371 NLRB No. 105, slip op. at 2 (2022), enfd. 2023 U.S. App. LEXIS 8442, 2023 WL 2818503 (D.C. Cir. 2023); *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 1 (2022) (notice-reading remedy appropriate where the employer's violations are sufficiently numerous and serious that a reading of the notice is warranted to dissipate the chilling effect of the violations on employees' willingness to exercise their Section 7 rights).

As requested by the General Counsel, the Respondent will also be ordered to post the standard Board notice, as well as the Board's Explanation of Rights poster, at each of the six stores, distribute them electronically, and have read them aloud to employees at each of the six stores by a district manager in the presence of a Board agent. See *Absolute Healthcare d/b/a Curaleaf Arizona,* 372 NLRB No. 16 (2022) (notice reading appropriate where high-level management officials openly participated in a widely disseminated course of unlawful conduct). However, I deny the request for a nationwide notice posting, as the facts and issues in this proceeding are limited solely to the six stores. I also decline to grant the General Counsel's request to order training sessions for managers and supervisors regarding their obligations under the Act, and allowing Board agents enter the non-customer sections of the Petitioned Stores at reasonable times during the 60-day posting period for compliance purposes, as the remedies already ordered render such measures unnecessary.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[158]

[157] See 372 NLRB No. 50 (2023), 372 NLRB No. 93 (2023), and 372 NLRB No. 122 (2023), as well as administrative law judge decisions issued at Case Nos. 12-CA-291151, 2023 NLRB LEXIS 239; 31–CA–299257, 2023 NLRB LEXIS 228; 03-CA-304675, 2023 NLRB LEXIS 227; 15-CA-290336, 2023 NLRB LEXIS 217; 18-CA-293653, 13-CA-296145, 2023 NLRB LEXIS 205; 2023 NLRB LEXIS 102; 03-CA-285671, 2023 NLRB LEXIS 99; 07-CA-293742, 2023 NLRB LEXIS 61; 27-CA-290551, 2023 NLRB LEXIS 54; 19-CA-290905, 2023 NLRB LEXIS 35; 18-CA-299560, 2023 NLRB LEXIS 159; 13-CA-296145, 2023 NLRB LEXIS 205; and 15 CA-290336, 2023 NLRB LEXIS 217.

[158] 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.

ORDER

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

1. Cease and desist from

(a) Threatening employees with loss of benefits if they continue to support the Union or if they selected the Union as their bargaining representative;

(b) Threatening employees with denial of wages increases if they selected the Union as their bargaining representative;

(c) Requiring employees' attendance at mandatory meetings for the purpose of discouraging employees from supporting the Union;

(d) More strictly enforcing rules and policies, including the Dress Code & Personal Appearance policy, that it did not strictly enforce prior to the filing of a representation petition;

(e) Maintaining rules which employees would reasonably construe to discourage engaging in union or other protected concerted activities, including specifically the How We Communicate policy contained in Respondent's Partner Guide;

(f) Applying its How We Communicate policy to restrict employees in the exercise of their Section 7 rights;

(g) Threatening employees that they will not be scheduled to work if they do not meet a minimum availability requirement, because they engaged in union activities or because they support the union;

(h) Reducing store operating hours because employees engaged in union activities or because they supported the union;

(i) Constructively discharging employees by enforcing a new minimum availability requirement and/or by reducing the availability of employees' regularly scheduled shifts by reducing store operating hours because employees engaged in union activities or because they support the union;

(j) Disciplining, discharging employees, or otherwise taking adverse action against employees because they engaged in union activities or because they support the union;

(k) Failing and refusing to bargain collectively with the Union by reducing store operating hours, imposing discretionary discipline, or implementing other terms and conditions of employment without affording the Union notice and an opportunity to bargain; and

(l) In any manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Rescind the overbroad How We Communicate policy maintained in Respondent's Partner Guide;

(b) Furnish employees with an insert for the current Partner Guide that (1) advises that the unlawful policy has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or publish and distribute to employees a revised Partner Guide that (1) does not contain the unlawful provision, or (2) provides a lawfully worded provision.

(c) Before implementing any changes in wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit (the 34th and Walnut Store Unit):

Included: All full-time and regular part-time baristas and shift supervisors performing work at the Employer's store #775 located at 3401 Walnut St., Philadelphia, PA 19104.

Excluded: All store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

(d) Before implementing any changes in wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit (the 20th and Market Store Unit):

Included: All full-time and regular part-time baristas and shift supervisors performing work at the Employer's store #08846 located at 1900 Market St., Philadelphia, PA 19103.

Excluded: All store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

(e) Reinstate Alexandra Chabrak and Alexandra Rosa to their positions, or if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of wages and benefits they may have suffered as a result of their unlawful discharge or constructive discharge and, in the event a discharged discriminatee is unable to return to work, instate a qualified applicant of the Union's choice;

(f) Make employees Alexandra Chabrak and Alexandra Rosa whole for any loss of earnings and other benefits resulting from their unlawful layoff, less any net interim earnings, plus interest, and WE WILL also make such employees whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful layoffs, including reasonable search-for-work and interim employment expenses, plus interest;

(g) Remove from all files any reference to the discharge of Alexandra Rosa and constructive discharge of Alexandra Chabrak and notify them in writing that this has been done and that these adverse actions will not be used against them in any way, including but not limited to, as a basis for any future personnel action against her or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker;

(j) Compensate Alexandra Chabrak, Alexandra Rosa, and all other affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a report allocating the backpay award to the appropriate calendar year(s) and a copy of the backpay recipient's corresponding W-2 form reflecting the backpay award;

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

(l) Within 14 days after service by the Region, post copies of the attached Notice to Employees marked "Appendix"[159] at each of the following facilities: 3401 Walnut Street (34th and Walnut); 1945 Callowhill Street (Callowhill Store); 600 South 9th Street (9th and South); 1900 Market Street (20th and Market); 3400 Civic Center Boulevard (Penn Medicine); and 1128 Walnut Street (12th and Walnut). Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed a facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent since February 16, 2022.

(m)Electronically distribute the Notice to Employees to all employees employed by Respondent in the United States and its Territories by text messaging, posting on social media websites, and posting on internal apps and intranet websites, if Respondent communicates with its employees by such means;

(n) Post the Board's Explanation of Employee Rights poster, alongside the Notice to

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

Employees and electronically post and electronically distribute the Explanation of Employee Rights to employees employed since February 16, 2022, at the six facilities.[160] If the Respondent customarily uses electronic means such as an electronic bulletin board, e-mail, website, or intranet to communicate with those employees, and maintain the posting of the Explanation of Employee Rights for no less than one year;

(o) At a meeting or meetings scheduled to ensure the widest possible attendance at the Petitioned Stores, have District Managers Juan Rivera, Les Fable, or Albert Millan,

(1) read both the Notice to Employees and the Explanation of Employee Rights to all employees employed at the Petitioned Stores, aloud in English and in additional languages if the Regional Director decides that it is appropriate to do so, in the presence of a Board agent; or, at Respondent's option, a Board agent to read the Notice to Employees and the Explanation of Employee Rights to all employees employed at the Petitioned, in English and in additional languages if the Regional Director decides that it is appropriate to do so, in the presence of management officials including District Managers Juan Rivera, Les Fable, and Albert Millan; and

(2) announce, schedule, and conduct the reading(s) of the Notice to Employees and the Explanation of Employee Rights in the same manner it customarily does when it wishes to convey information to all employees at the Petitioned Stores in person; and

(p) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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

Dated, Washington, D.C. August 10, 2023

Michael A. Rosas
Administrative Law Judge

[160] The Board link to the poster is employee-rights-under-the-nlra-poster-two-page-85-x-11-version-pdf-2022.pdf (nlrb.gov)

**APPENDIX A**

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

**WE WILL NOT** do anything to prevent you from exercising these rights.

**WE WILL NOT** threaten you with a loss of benefits if employees continue to support the Union or select the Union as your collective-bargaining representative.

**WE WILL NOT** threaten that you will not receive future wage increases if you select the Union as your collective-bargaining representative.

**WE WILL NOT** maintain an overly broad How We Communicate policy, and **WE WILL NOT** apply our How We Communicate policy to restrict your exercise of the above rights.

**WE WILL NOT** more strictly enforce rules and policies, including our Dress Code & Personal Appearance policy, in response to union activity.

**WE WILL NOT** threaten to stop scheduling you for work if you do not meet a minimum availability requirement in response to union activity.

**WE WILL NOT** reduce the operational hours of our stores in response to union activity.

**WE WILL NOT** discipline you, discharge you, or otherwise discriminate against you because of your union activity or support for the Union.

**WE WILL NOT** change your terms and conditions of employment by altering store operating hours or by using discretion to discharge employees in bargaining units represented by the Union without first notifying the Union and giving it an opportunity to bargain.

**WE WILL NOT** in any manner interfere with your rights under Section 7 of the Act.

**WE WILL** rescind our Partner Guide's How We Communicate policy, which fails to make clear that our requirement that employees be "professional" and "respectful" at all times is not intended to restrict your exercise of your rights under Section 7 of the Act.

**WE WILL** furnish you with an insert for the current Partner Guide that (1) advises that the unlawful policy has been rescinded, or (2) provides a lawfully worded policy on adhesive backing that will cover the unlawful policy; or **WE WILL** publish and distribute revised Partner Guides that (1) do not contain the unlawful policy, or (2) provide a lawfully worded policy.

**WE WILL**, before implementing any changes in wages, hours, or other terms and conditions of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining units:

> All full-time and regular part-time baristas and shift supervisors performing work at the Employer's store #775 located at 3401 Walnut St., Philadelphia, PA 19104 (the 34th and Walnut Store), excluding all store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.
>
> All full-time and regular part-time baristas and shift supervisors performing work at the Employer's store #08846 located at 1900 Market St., Philadelphia, PA 19103 (the 20th and Market Store), excluding all store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

**WE WILL** rescind any discipline we issued pursuant to our stricter enforcement of the Dress Code and Personal Appearance policy at the following locations: 600 South 9th Street (the 9th and South Store); 1900 Market Street (the 20th and Market Store); 3401 Walnut Street (the 34th and Walnut Store); and 1128 Walnut Street (the 12th and Walnut Store)

**WE WILL** make whole 34th and Walnut Store Unit employees for any losses they suffered by reason of the unlawful changes to store operating hours we implemented on and after May 9, 2022, plus interest, including reasonable consequential damages.

**WE WILL** reinstate Alexandra Chabrak and Alexandra Rosa to their positions, or if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of wages and benefits they may have suffered as a result of their unlawful discharge or constructive discharge and, in the event a discharged discriminatee is unable to return to work, instate a qualified applicant of the Union's choice.

**WE WILL** make employees Alexandra Chabrak and Alexandra Rosa whole for any loss of earnings and other benefits they lost, resulting from their discharge or constructive discharge, less any net interim earnings, plus interest and **WE WILL** also make them whole for any other direct or foreseeable pecuniary harms suffered as a result of their discharge or constructive discharge, including reasonable search-for-work and interim employment expenses, plus interest.

**WE WILL** remove from our files any reference to the discharge of Alexandra Rosa and constructive discharge of Alexandra Chabrak, and **WE WILL** notify them in writing that this has been done and that these adverse actions will not be used against them in any way, including but not limited to, as a basis for any future personnel action against her or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker.

**WE WILL**, within 14 days from the date of the Board's Order, send by U.S. mail and email letters of apology to employees Alexandra Chabrak and Alexandra Rosa apologizing for any hardship or distress caused by their discharge or constructive discharge.

**WE WILL** compensate Alexandra Chabrak, Alexandra Rosa, and all other affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a report allocating the backpay award to the appropriate calendar year(s) and a copy of the backpay recipient's corresponding W-2 form reflecting the backpay award.

STARBUCKS CORPORATION

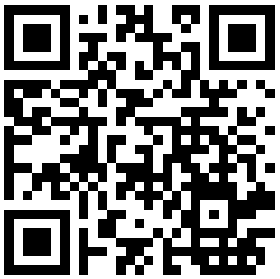
_____
(Employer)

Dated _____ By _____
(Representative) (Title)

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

615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case04-CA-292636 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. The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-294051 or by



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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (314) 539-7780.