Starbucks Corporation *and* Workers United. Case 03–CA–310676

DECISION AND ORDER

July 24, 2024

BY CHAIRMAN MCFERRAN AND MEMBERS PROUTY AND WILCOX

On February 9, 2024, Administrative Law Judge Michael P. Silverstein issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. In addition, the General Counsel filed an exception and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[1]

The Board has considered the decision and the record in light of the exceptions and briefs[2] and has decided to affirm the judge's rulings, findings,[3] and conclusions[4] and to adopt the recommended Order as modified and set forth in full below.[5]

ORDER

The National Labor Relations Board orders that the Respondent, Starbucks Corporation, Liverpool, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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

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

(c) Creating the impression that it is engaged in surveillance of its employees' union or other protected concerted activities.

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

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

(a) Post at its facility in Liverpool, New York, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business

[1] The Respondent asserts that Members Prouty and Wilcox should recuse themselves, claiming that their "past, present, and perceived relationships with the Service Employees International Union (SEIU), SEIU Local Unions, and their affiliates, including Workers United" create a conflict of interest. Members Prouty and Wilcox have determined, in consultation with the NLRB Designated Agency Ethics Official, that there is no basis to recuse themselves from the adjudication of this case.

[2] In its brief, the Respondent challenges the constitutionality of the statutory removal protections afforded to Board Members and Board administrative law judges. This argument, raised for the first time on exceptions and not raised before the judge, is deemed untimely and accordingly is waived. See *Yorkaire, Inc.*, 297 NLRB 401 (1989), enfd. 922 F.2d 832 (3d Cir. 1990).

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

[4] There are no exceptions to the judge's dismissal of the allegation that the Respondent threatened an employee with decreased wages in violation of Sec. 8(a)(1) by telling her that it would have the right to negotiate pay downwards.

The judge correctly concluded, based on current Board law, that the Respondent did not violate Sec. 8(a)(1) by holding mandatory captive audience meetings. We are open, however, to reconsidering *Babcock & Wilcox Co.*, 77 NLRB 577 (1948), and the legality of mandatory captive audience meetings, in a future appropriate case.

[5] We shall modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with our decisions in *Paragon Systems, Inc.*, 371 NLRB No. 104 (2022), and *J. Picini Flooring*, 356 NLRB 11 (2010). We shall substitute a new notice to conform to the Order as modified.

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

or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 20, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 3 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. July 24, 2024

Lauren McFerran, Chairman

David M. Prouty, Member

Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

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

WE WILL NOT threaten you with loss of pay and benefits if you select the Union as your bargaining representative.

WE WILL NOT create the impression that we are engaged in surveillance of your union or other protected concerted activities.

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

STARBUCKS CORPORATION

The Board's decision can be found at https://www.nlrb.gov/case/03-CA-310676 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.

Abigail Snelling, Esq. for the General Counsel
Jacqueline Phipps Polito, Esq. and Alexa Beining, Esq. for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL P. SILVERSTEIN, Administrative Law Judge. In this case, the General Counsel alleges that Starbucks Corporation (Respondent) violated Section 8(a)(1) of the National Labor Relations Act in response to an organizing campaign at its Liverpool (Clay), New York store. For the reasons described below, I find that Respondent has violated the Act by 1) soliciting employee complaints and grievances; 2) more closely monitoring store employees; 3) telling employees they would lose access to certain benefits like free college tuition through Arizona State University if they selected the Union as their collective-bargaining representative; and 4) telling employees that they would work fewer hours, get less pay, and lose an annual raise if employees voted in favor of the Union. I, however, recommend dismissal of the lone remaining allegation, that Respondent held unlawful captive audience meetings.

Workers United (the Union or Charging Party) filed the charge in this case on January 23, 2023. The complaint issued on June 12 and Respondent filed its amended answer on November 30.

This case was tried in Syracuse, New York, on January 9, 2024. At trial, all parties were afforded the right to call, examine,

and cross-examine witnesses,[1] to present any relevant documentary evidence, and to argue their respective legal positions orally. Counsel for the General Counsel and Respondent filed post-hearing briefs.

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

FINDINGS OF FACT

JURISDICTION

Respondent admits, and I find, that it is a Washington corporation headquartered in Seattle, Washington, and is engaged in operating retail stores selling food and beverages throughout the United States, including the Clay store that is the subject of this case, located at 3820 NY-31, Liverpool, New York. In conducting its business operations over the last 12 months, Respondent derived gross revenues in excess of $500,000 and purchased and received goods in the State of New York valued in excess of $5,000 from points located outside the State of New York[2]. Respondent also admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction over this case pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES[3]

The facility involved in this case is a Starbucks store in Liverpool, New York (the Clay store), which is located about 15 to 20 minutes outside the city of Syracuse. (Tr. 31). This is a standalone store with a drive-thru that employs about 20 to 30 employees. (Tr. 30). The store opens at 6:00am and closes most days at 9:00pm. (Tr. 42, 48). About 5 to 9 baristas work at the store in the mornings and afternoons (mid-shift) and 3 to 4 baristas work the closing shift. (Tr. 30, 64).

At the Clay store, there is one coffee bar where baristas make hot and cold beverages. Customers walking in the front door of the store see baristas stationed at the bar in the back left corner and tables and chairs set up to the right of the store entrance. (Tr. 25, 42, 53).

On December 9, 2022, the Charging Party released a statement via Twitter congratulating Clay store partners for filing for a representation election. Attached to the Twitter statement was a copy of a letter store employees sent to Respondent's CEO announcing their intent to unionize. (GC Exh. 2, Tr. 19–20). Region 3 of the Board processed the Charging Party's petition on December 12, 2022, as Case 03–RC–308620. The Region conducted a secret ballot election on January 27, 2023, with a final vote of 10 to 8 in favor of the Union. On February 6, 2023, Region 3 issued a certification of representative for the following bargaining unit:

> "All full-time and regular part-time baristas and shift supervisors employed by the Respondent at Store #52420 located at 3820 NY-31, Liverpool, New York; excluding office clerical employees, Store Managers, Assistant Store Managers, guards, and professional employees and supervisors as defined in the Act." (GC Exh. 3).

At the time the representation petition was filed in December 2022, and continuing through the late January 2023 election, Angeline Schaefer and Emily Tokich served as co-managers of the Clay store and Theresa Sellitto served as the district manager responsible for the Clay store. Respondent stipulated that during this time period, Schaefer, Tokich, and Sellitto were supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act. (Tr. 11, 17–18, 48).

Makaela Maciariello's Testimony

Makaela Maciariello started working as a barista at Respondent's Clay store in about October 2020. Maciariello testified that Sellitto was the store's district manager when she (Maciariello) started working for Respondent. (Tr. 16, 18). Maciariello typically worked Mondays through Fridays for 5.5 hours/day - either in the morning or the mid-afternoon, for a total of 20–25 hours/week. (Tr. 16–17, 34–35).

Prior to the December 2022 announcement of the union campaign, Maciariello had only spoken to Sellitto about five times during the course of her two and a half years of employment.[4] Those conversations only consisted of pleasantries such as hello and goodbye and how are you doing. (Tr. 21). But following the initiation of the representation petition, Maciariello noticed a pronounced uptick in Sellitto's presence at the Clay store. Sellitto started working out of the Clay store about 1 to 2 times/week, parking herself at a table closest to the front doors (facing the baristas working at the coffee bar) at about 9 a.m. or 10 a.m. Sellitto spent most of the time in the Clay store working on her laptop and then left the store at about 3 p.m. or 4 p.m. (Tr. 22, 25, 42). Maciariello estimated that between the time of the Twitter announcement through the January 27 election, she saw Sellitto in the store about 8 to10 times. (Tr. 42).

In about late December 2022, Maciariello was at the end of her 10:30am to 4:00pm shift when she sat down to speak with Sellitto. This conversation took place at the table by the front door where Sellitto had regularly stationed herself.[5] Sellitto

[1] The General Counsel called two witnesses—Makaela Maciariello and Taylor Strouse—while the Respondent did not call any witnesses.

[2] Respondent's amended answer mistakenly referred to its Vestal (New York) store when confirming the purchase and receipt of goods from outside the State of New York. Vestal is a suburb of Binghamton, New York, but all parties acknowledge that the dispute at the center of this case took place in Liverpool (Clay), New York, which is a suburb of Syracuse.

[3] The record on p. 15, lines 13–15 is hereby corrected to note that Theresa Sellitto was not called as a witness at the hearing. I also grant Counsel for the General Counsel's motion to correct the record (proffered in her posthearing br.—p. 13, fn. 16) on page 72, line 17 of the hearing transcript to add the word "not" such that the sentence reads: "…so our position would be that we would not withdraw that allegation…"

[4] Sellitto took a leave of absence at some point in 2020 and again in 2022. These leaves of absences lasted anywhere from 2 to 6 months. (Tr. 18, 49).

[5] No store official told Maciariello that she had to meet with Sellitto on this occasion. (Tr. 38).

asked Maciariello if she had any concerns at work. Maciariello said that her main concern was her hours being cut from about 20 to 25 hours/week to about 15 hours/week. (Tr. 27, 35). Maciariello had previously raised this concern with store managers Scheaefer and Tokich, but they had simply told her that everybody's hours were being reduced. (Tr. 36). Sellitto confirmed that everybody's hours were being cut but said that if she (Maciariello) wanted Sellitto to do anything further for her, Sellitto needed a little more information. (Tr. 27). Maciariello said OK and then raised a separate issue concerning a barista who had been forced to transfer from the Clay store to a store in Cicero. Maciariello asked when this barista would be allowed to return to the Clay store and Sellitto said that she wasn't allowed to give out information concerning another barista. (Tr. 27). Maciariello testified that Sellitto had not asked previously asked her about her workplace concerns and Sellitto did not reference the Union during this conversation. (Tr. 29, 37).

A few days before the January 27 election, either a shift supervisor (bargaining unit employee) or store manager told Maciariello that Sellitto wanted to speak with her. This was not a pre-scheduled meeting and Maciariello stopped her shift work to sit down and talk with Sellitto. The conversation began with Sellitto asking Maciariello if she had any workplace concerns. Maciariello said that she didn't really have any she wished to discuss with Sellitto. (Tr. 28, 38–40). Sellitto then pivoted to discuss the election, where the voting would take place, and how partners could return to the store at the end of the day to witness the vote count. Maciariello also recalled Sellitto stating that Respondent would have the right to negotiate employees' pay downwards because the Union had the right to negotiate pay upwards. (Tr. 29).

After the election, Maciariello saw Sellitto in the store less frequently—perhaps once in the month following the election. (Tr. 43). Sellitto stopped working for Respondent on April 9, 2023. (Tr. 11).

Taylor Strouse's Testimony

Taylor Strouse worked as a barista at the Clay store from January 2022 through November 2023. She usually worked about 20 to 28 hours/week either on the mid-day or closing shift. (Tr. 47).

Prior to the filing of the representation petition, Strouse had only seen Sellitto in the Clay store two or three times and Strouse did not speak with Sellitto during these visits. (Tr. 53). After the filing of the petition, Strouse saw Sellitto in the store a couple of times each week. During these visits, Sellitto would sit at a table in the lobby of the store positioned so that she could see the bar area where the baristas were working. Sellitto would have her laptop with her and stay in the store for a few hours at a time. (Tr. 52–53).

On one occasion about a week before the January 27 election, a shift supervisor informed Strouse that Sellitto wanted to meet with her. The shift supervisor covered Strouse's shift so that Strouse could sit down and talk to Sellitto.[6] This conversation took place at the table by the front door of the Clay store and lasted about 5-10 minutes. (Tr. 53–54, 63). Sellitto started the conversation by telling Strouse that she (Sellitto) had heard things about the Union and she (Sellitto) wanted to know how Strouse felt about everything going on, about joining the Union, and what Strouse was going to do (regarding the Union). Strouse said that she was indifferent about the Union and she wanted to do more research before she made a decision one way or the other. (Tr. 54–55).

In response, Sellitto said that store employees would lose benefits if they chose to unionize. Sellitto specifically said that employees would lose the Arizona State University tuition benefit available to Respondent employees who regularly work more than 20 hours/week. This benefit allows Respondent employees to earn a bachelor's degree online without having to pay tuition. (Tr. 55, 66). Sellitto then said that if employees unionized, they would get fewer hours and less pay. Sellitto specifically noted that employees would not receive their annual, tenure-based raises if they selected the Union as their collective-bargaining representative. (Tr. 55–56). Additionally, Sellitto told Strouse that if employees unionized, they would lose their Lyra mental health benefit, which entitled Respondent's employees to free online mental health therapy sessions. (Tr. 56–57). At this point in the conversation, Sellitto showed Strouse her laptop screen and referenced resources that Respondent had available for employees to educate themselves about the Union. Sellitto said that the Respondent was there for employees and the conversation ended. (Tr. 57). On cross-examination, Strouse confirmed that Sellitto was expressing her opinions about the Union, but Strouse could not recall the exact words that Sellitto used to convey that she was only stating her opinions about the Union. (Tr. 68).

Strouse did not discuss the Union with store managers Schaefer or Tokich, nor did she discuss the Union with a different district manager, Makayla Murphy, who came to the Clay store during the runup to the election. (Tr. 51–52, 63, 69).

ANALYSIS

Respondent Violated Section 8(a)(1) of the Act by Soliciting Grievances from Makaela Maciariello in December 2022—Complaint § 6(a)

An employer's solicitation of grievances during a union organizing campaign is unlawful when it "carries with it an implicit or explicit promise to remedy the grievances and impress[es] upon employees that union representation [is]. . . unnecessary." *Tesla, Inc.,* 370 NLRB No. 101, slip op. at 6 (2021), citing *Albertson's, LLC,* 359 NLRB 1341, 1341 (2013). That an employer's representative does not make a commitment to specifically take corrective action does not "abrogate the anticipation of improved conditions expectable for the employees involved. The inference that an employer is going to remedy the same when it solicits grievances in a pre-election setting is a rebuttable one." *Albertson's LLC,* 359 NLRB at 1341.

In this case, there is no evidence that prior to the filing of the representation petition, Theresa Sellitto regularly, or even occasionally, met with workers seeking their feedback about

[6] This conversation was not on the daily schedule prepared for store employees. (Tr. 63).

workplace changes. In fact, Maciariello provided unrebutted testimony that her handful of encounters with Sellitto over two years of employment consisted of hello, goodbye, and how are you. But after the Charging Party filed its representation petition, Sellitto suddenly became a regular visitor to the Clay store. And then later in December 2022, Sellitto called Maciariello over and asked her about specific concerns she had at work. Maciariello responded to this pointed question with a pointed answer—expressing her concerns about her reduction in hours. Sellitto responded by telling Maciariello that if she wanted her "to do anything further" about this issue, she needed more information from Maciariello. Thus, Sellitto's statement went beyond an implied promise to remedy Maciariello's concerns – offering a more explicit promise to remedy these grievances to blunt employees' support for the Union.

In its post-hearing brief, Respondent asserts that no violation of the Act has been established because there was no evidence that Sellitto made an express or implied promise to remedy any grievances. Respondent, however, omitted one critical fact from its summary of Maciariello's testimony—that Sellitto told Maciariello that she would need more information from her "to do anything further." Such a statement clearly put Maciariello on notice that Respondent wished to address her scheduling concerns – Sellitto just needed additional information to try to make this happen. And Respondent's strategy not to call witnesses in this case means that Respondent has failed to rebut the inference that Respondent was going to remedy Maciariello's grievances when it solicited these grievances before the election. Based on the above, Sellitto's overture to Maciariello about her workplace concerns and the information Sellitto would need to remedy these concerns violated Section 8(a)(1) of the Act.

Respondent Violated Section 8(a)(1) of the Act by Telling Employees That They Would Lose Specific Benefits if They Unionized—Complaint § 6(c), (e), (f)[7], and (g)

Taylor Strouse offered unrebutted testimony that in the week before the January 27 representation election, Theresa Sellitto conveyed her opinion that employees would lose benefits if they voted in favor of the Union. Sellitto specifically identified the free tuition employees received through Arizona State's online university as a benefit employees would lose. Sellitto also told Strouse that employees would lose work hours, lose pay, and would not receive their annual raises if employees selected the Union as their collective-bargaining representative. Sellitto's statements violated the Act.

Section 8(c) of the Act states that:

> "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 of reprisal or force or promise of benefit."

During an election campaign, employees may permissibly engage in legitimate campaign propaganda that is not objectively coercive. *NLRB v. Gissel Packing, Co.,* 395 U.S. 575, 617 (1969). The Board has upheld the right of an employer to inform employees that benefits can be lost through the give and take of negotiations. *So-Lo Foods, Inc.,* 303 NLRB 749, 750 (1991) (when a respondent official describes bargaining from scratch as part of first-contract negotiations, the Board distinguishes between a lawful statement that benefits could be lost through the bargaining process and an unlawful threat that benefits will be taken away and the union will have to bargain to get the benefits back). An objective standard is used to determine whether a statement amounts to an unlawful threat of retaliation for engaging in union or other protected activity. *Sunbelt Rentals, Inc.,* 370 NLRB No. 102, slip op. at 3 (2021); *Midwest Terminals of Toledo, Inc.,* 365 NLRB No. 158, slip op. at 21 (2017). The questionable threats "need not be explicit if the language used by the employer or his representative can reasonably be construed as threatening." *NLRB v. Ayer Lar Sanitarium,* 436 F.2d 45, 49 (9th Cir. 1970). When applying this standard, the Board considers the totality of the relevant circumstances. *Saginaw Control & Engineering, Inc.,* 339 NLRB 541, 541 (2003); *Mediplex of Danbury,* 314 NLRB 470, 471 (1994); *Noah's Bay Area Bagels,* 331 NLRB 188, 188 (2000)(attendees at a captive audience meeting could reasonably believe from the employer official's remarks and gestures that they would suffer a loss in wages and other benefits as a direct result of the union, rather than as a possible outcome of good-faith bargaining between the employer and the union).

In this case, Strause's unrebutted testimony revealed a blunt warning from Sellitto – if employees selected the Union as their collective-bargaining representative, they would lose their Arizona State tuition benefit, lose pay, and lose their annual raises. There was no hedging about the give and take of bargaining - Sellitto did not reference negotiations at all. Plus, Sellitto used the word "would" instead of "could" regarding the consequences of unionization. And Sellitto was very specific about the benefits that employees would lose. Even though Strouse understood Sellitto to be expressing her opinion, such naked threats are not protected by Section 8(c) of the Act.

Respondent argues in its post hearing brief that Strouse's testimony is unreliable because she did not testify verbatim to what Sellitto said to her about a year earlier and because she interchangeably used the terms "would and could" in her testimony. I disagree. In this regard, Strouse on direct provided strong detail in response to open ended questions. She testified that Sellitto asked her how she felt about the Union, she told Sellitto that she was indifferent, and she wanted to do some more research before she made her decision. In response, Sellitto told Strouse that she "would lose benefits" if the employees unionized. When asked on direct about these benefits, Strouse testified that Sellitto said: "we would lose the ASU (Arizona State University) benefit." Strouse then offered that Sellitto said this (ASU tuition) could be a benefit "we would lose." When I asked Strouse if Sellitto said that employees "would lose" or "could lose" these benefits, Strouse testified that Sellitto said: "we would lose them." (Tr.

[7] Complaint par. 6(f) alleges that on about January 20, 2023, Respondent threatened that employees would lose benefits if they selected the Union as their collective-bargaining representative. Complaint par. 6(c) alleges that on the same date, Respondent threatened that employees would lose a specific benefit—free Arizona State University tuition – if they selected the Union as their collective-bargaining representative.

54–56).

On cross-examination, Strouse initially confirmed that Sellitto told her that she would lose Arizona State University benefits if employees unionized. (Tr. 64–65). Then when Respondent counsel asked whether Sellitto expressed her opinions only about what could happen if the employees unionized, Strouse said yes and no other questions on this subject were asked. (Tr. 65). I asked the witness to clarify her testimony regarding the opinion part as well as the "would vs. could" piece. On the latter, Strouse solidly confirmed her direct testimony, and the first part of cross, that Sellitto said that employees would lose benefits if they unionized. (Tr. 69). Regarding Sellitto expressing her opinion, Strouse confirmed that this was the case – she just couldn't recall the words that Sellitto used. Strouse genuinely tried to recall those exact words, but she could not. To me, Strouse's struggles made her overall testimony more genuine and truthful. On the matters she had good recall (e.g. all of the benefits that employees would lose, including the Lyra mental health benefit), Strouse was confident and detailed. On the matters she could not recall (e.g. the words that Sellitto used to confirm she was expressing her opinion), Strouse did not embellish and did not manufacture any answers to reach a pre-ordained conclusion. Instead, she plainly stated that she could not remember. I certainly do not believe that a witness must retell a year-old conversation verbatim to be judged credible. Instead, the witness must demonstrate good recall coupled with a willingness to admit when they do not always remember everything that was said. Such forthrightness was the hallmark of Strouse's testimony, and I credit her testimony that Sellitto said that employees would lose certain pay and benefits if they selected the Union as their collective-bargaining representative. Thus, Sellitto's threats of reprisal violate Section 8(a)(1) of the Act.[8] See *UNF West, Inc.,* 361 NLRB 387, 39 (2014) (employer violated Section 8(a)(1) by telling employees that they would lose their 401(k) and other benefits if they unionized).

By Regularly Placing Theresa Sellitto in the Lobby of the Clay Store, Respondent More Closely Monitored Employees in Violation of Section 8(a)(1) of the Act—Complaint § 6(b)

In deciding whether an employer's conduct violates Section 8(a)(1), the Board uses an objective standard—whether the conduct would reasonably tend to interfere with the free exercise of an employee's statutory rights. *Midwest Terminals of Toledo,* 365 NLRB 1645, 1665 (2017). Management officials may observe open and public union or protected activity on the employer's premises without violating Section 8(a)(1) unless this behavior is "out of the ordinary," and thereby coercive. *Aladdin Gaming, LLC,* 345 NLRB 585, 585–586 (2005). In determining whether the employer's surveillance is unlawful, the Board considers indicia of coerciveness such as the duration of the observation, the employer's distance from its employees while observing them, and whether the employer engaged in other coercive behavior during its observation. Id. at 586.

In this case, Maciariello testified that in about two years as the district manager of the Clay store, she had only seen Sellitto in the store a handful of times and had no meaningful conversations with her during those earlier visits.[9] But when the Union filed the representation petition in December 2022, Sellitto suddenly became a regular at the Clay store. Strouse and Maciariello saw Sellitto in the store twice a week for several hours at a time. Each testified that Sellitto strategically placed herself at a table where she could observe all of the baristas working in the store. These facts certainly satisfy the "out of the ordinary" standard. And the fact that Sellitto purposely chose to park herself at a table where she could monitor all baristas as they worked would lead an objective observer to conclude that the primary purpose for Sellitto's visits was to monitor and hopefully chill employees' union activities in the runup to the January 27 election.[10]

In its post-hearing brief, Respondent relies on *Wal-Mart Stores, Inc.,* 352 NLRB 815, 816–817 (2008)[11] for the proposition that the presence of additional managers does not, in and of itself, create an impression of unlawful surveillance. *Wal-Mart,* however, is distinguishable from the instant matter. To this end, in *Wal-Mart,* a regional manager took over as interim manager of a tire and lube center that was the subject of union organizing activities. But the regional manager only took over as interim manager because the regular manager was on extended leave and no other manager had replaced him. In our case, the Clay store had two co-managers, Schaefer and Tokich, at the time the petition was filed, and Sellitto's out-of-the ordinary presence in the store only added to the number of management eyes trained on the store's baristas.

Based on the above, Respondent violated Section 8(a)(1) of the Act by increasing management's in-store presence to create the impression of surveillance of employees' protected activities.

Respondent Did Not Violate the Act by Asking Maciariello and Strouse to Meet with Sellitto—Complaint § 6(d)

Counsel for the General Counsel alleges that Respondent violated the Act by holding captive audience meetings about a week before the election. The record evidence does not support a violation here and I recommend dismissal of this allegation. To this end, Section 8(c) of the Act gives employers the right to educate their employees about labor organizations, collective bargaining, and the Act itself. The Board has interpreted Section 8(c) to allow employers to lawfully compel employees to attend individual or group meetings in which it urges them to reject union representation. See *Babcock & Wilcox Co.,* 77 NLRB 577, 578

[8] My findings of a violation here are only based on Strouse's testimony. Maciariello's testimony about her January 2023 conversation with Sellitto only referenced Respondent's right to negotiate pay downwards just like the Union would have the right to negotiate pay increases for Clay store employees. Such testimony does not contain an explicit or implied threat and does not amount to a violation of the Act.

[9] Even if Sellitto was on two six-month coffee breaks during Maciariello's employment, this leaves at least a year of overlap when Sellitto worked as a district manager and Maciariello worked as a barista at the Clay store. And there is no evidence that Sellitto stationed herself on her laptop in the lobby of the Clay store for several hours/day at any point during Maciariello's employment prior to the filing of the representation petition.

[10] As noted infra, Sellitto engaged in other coercive conduct during her visits, namely her solicitation of grievances and threats involving the loss of benefits if employees unionized.

[11] This case was decided by a two-member Board and thus does not carry precedential value.

(1948); *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 617 (1969). In this case, both Maciariello and Strouse were directed by a shift supervisor (bargaining unit employee) to speak with Sellitto in late January 2023. These ad-hoc meetings did not appear on the employees' daily schedules and in these one-on-one conversations, Sellitto delivered her pitch as to why employees should not select the Union as the employees' collective bargaining representative. But as the Board reiterated in *Electrolux Home Products, Inc.,* 368 NLRB No. 34, slip op. at 5 (2019), it is lawful for an employer to conduct a captive-audience meeting to persuade employees not to unionize. As an administrative law judge, it is not my place to make or alter existing law or policy – that is the exclusive domain of the Board. Based on the above, no violation of the law has been established.

CONCLUSIONS OF LAW

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

2. The Charging Party, Workers United, is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following acts and conduct, Respondent has violated Section 8(a)(1) of the Act:

a. Soliciting employee grievances with the implication that Respondent will remedy those grievances;

b. Threatening employees with a loss of pay and benefits, including a reduction in hours, pay, loss of annual raises, and loss of the Arizona State tuition benefit, if employees selected the Union as their collective-bargaining representative;

c. More closely monitoring unit employees by stationing district manager Theresa Sellitto in the lobby of the Clay store.

4. All other allegations of the complaint are dismissed.

REMEDY

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

I will order that Respondent post a notice at the Clay store in the usual manner, and in accordance with *Starbucks Corp.,* 372 NLRB No. 122, slip op. at 5 (2023), notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

The General Counsel also requests a reading of the notice and training for supervisors. As for the notice reading, the Board generally grants this remedy where the unfair labor practices committed by the respondent are so pervasive that a notice reading is necessary to dispel the impact of this unlawful conduct. I decline the General Counsel's request for a notice reading here because of the relatively limited nature of the violations and because all violations were committed by one individual, Theresa Sellitto, a district manager who is no longer employed by Respondent. Thus, high–level management officials did not openly participate in a widely disseminated course of unlawful conduct. See *Starbucks Corp.*, 372 NLRB No. 122, slip op. 1 fn. 3 (2023) (the Board did not order a notice reading despite finding that a district manager investigated and ultimately participated in the decision to unlawfully terminate a barista in retaliation for their union organizing activities). I also decline to order training for Respondent's managers as such a remedy is not warranted in this matter.

ORDER

Respondent, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting employee grievances with the implication that Respondent will remedy those grievances;

(b) Threatening employees with a loss of pay and benefits, including a reduction in hours, pay, loss of annual raises, and loss of the Arizona State tuition benefit, if employees select the Union as their collective-bargaining representative;

(c) More closely monitoring unit employees by stationing district manager Theresa Sellitto in the lobby of the Clay store.

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

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

(a) Post at its Liverpool (Clay), New York facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent, and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 20, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 3 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.

Dated, Washington, D.C. February 9, 2024

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT solicit your complaints or grievances, nor will we imply that we will remedy these complaints and grievances, to undermine your support for the Union.

WE WILL NOT threaten you with loss of pay or benefits for selecting the Union as your designated collective-bargaining representative.

WE WILL NOT have your district manager more closely supervise your work in response to your union organizing activities.

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

STARBUCKS CORP.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/03-CA-310676 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.