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

STARBUCKS CORPORATION

and

WORKERS UNITED LABOR UNION INTERNATIONAL, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION

Cases 19–CA–294579
19–CA–295181
19–CA–297594
19–CA–302068
19–CA–303055
19–CA–304580

with

ALL OF THE JOINT BOARD AFFILIATES OF WORKERS UNITED LABOR UNION INTERNATIONAL,

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 513,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 30 and

CENTRAL AND ROCK PARTNERS UNION,

Parties in Interest

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DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. This case was tried before me on October 25 through 27, 2022, in Seattle, Washington, based on an Amended Consolidated Complaint and Notice of Hearing (complaint) issued on October 4, 2022, by the Regional Director for Region 19 of the National Labor Relations Board. The complaint was based on charges (captioned above) filed by Charging Party Workers United Labor Union International (Charging Party, Workers United or the Union). The General Counsel alleges that Respondent Starbucks Corporation (Respondent or Starbucks) violated Sections 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et. seq. (the Act), by disparately granting nationwide wage and benefit increases in response to union organizing and by making unlawful statements to employees in order to discourage their union activity. Respondent filed a timely answer denying the commission of the alleged unfair labor practices.

As discussed below, I find that, by adopting a corporate-wide antiunion policy of explicitly conditioning eligibility for increased enhanced wages and benefits on its employees' refraining from seeking union representation for the purposes of collective bargaining, Respondent violated the Act as alleged. I further find, with some noted exceptions, that Respondent's various statements regarding the wage and benefit increases were unlawful.

The record in this proceeding consists of stipulations by the parties and the testimony of a single witness presented by Respondent. After considering the entire record,[1] including my observation of witness demeanor, and having reviewed the briefs filed by the General Counsel, Charging Party and Respondent, as well as the letter of supplemental authorities filed by Respondent on September 12, 2023,[2] I make the following findings of fact and conclusions of law.

[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "Jt. Exh. __" for Joint Exhibit; "GC Br. at __" for the General Counsel's post-hearing brief; "R. Br. at __" for Respondent's post-hearing brief; and "U. Br. at __" for Charging Party's post-hearing brief. Transcript and exhibit citations are intended as an aid only. Factual findings are based upon the entire record and may include parts of the record that are not specifically cited.

[2] On September 14, 2023, Counsel for the General Counsel filed a letter-response that exceeded the Board's word limitation for such submissions. Accordingly, I grant Respondent's motion to strike it. See Board Rules and Regulations § 102.6; *Reliant Energy*, 339 NLRB 66 (2023).

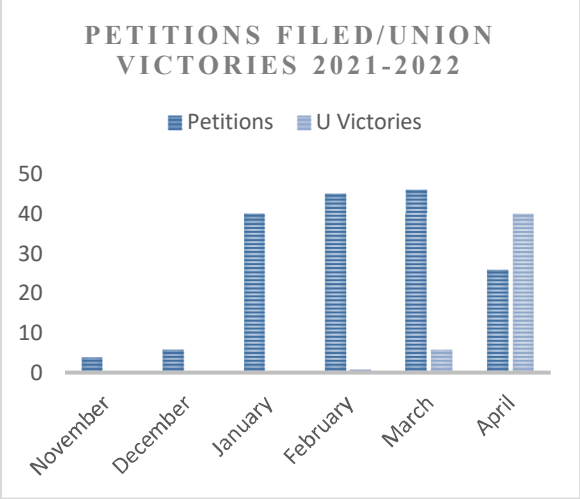
I. JURISDICTION AND LABOR ORGANIZATION

Respondent is a Washington State corporation with headquarters located at 2401 Utah Avenue South, Seattle, Washington, and is engaged in selling food and beverages at locations throughout the United States. At all relevant times, Respondent annually derived gross revenues in excess of $500,000 and sold from the State of Washington goods valued in excess of $50,000 to points outside the State of Washington. 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. The parties stipulate that Workers United Labor Union International, is a labor organization within the meaning of Section 2(5) of the Act. I also find that this dispute affects commerce, and the National Labor Relations Board (NLRB or the Board) has jurisdiction pursuant to Section 10(a) of the Act.

II. FACTS

Respondent owns and operates approximately 9,000 coffee shops throughout the United States and employs approximately 220,000 employees at these locations. (Tr. 162.) Respondent refers to its statutory employees as "partners"; these workers include baristas as well as shift supervisors. (Jt. Exh. 80 ¶ 4, ¶ 9.)

Prior to 2021, none of Respondent's partners in the United States was represented by a labor organization. Beginning in late August 2021, in Buffalo, New York, the Union began filing petitions to represent units of Respondent's employees. As it turns out, interest in union representation was not limited to Buffalo, and the next several months saw a wave of election petitions filed seeking to represent Starbucks workers throughout the country. A review of petition filing activity through April 2022 shows that petitions ballooned from ten (in November and December of 2021) to an average of 43 petitions for each of January, February and March and that employees were overwhelmingly voting for union representation once they were granted a Board-conducted election:



(Jt. Exhs. 74 & 80 ¶ 5, ¶ 6, ¶ 36.)

Beginning in early April, Respondent deployed a corporate-wide response to the organizing, involving a sophisticated online messaging campaign aimed at convincing partners to reject union representation and instead entrust management to fix working conditions. Using its various online platforms, Respondent wove a 'worker-management cooperation' narrative into its messaging; it announced that "collaboration sessions" were taking place between top executives and nonunion partners, which the latter were making their needs—including improved wages and benefits—known.

Respondent's antiunion campaign reached a crescendo on May 3 when Respondent announced that it was granting wage and benefit increases—referred to by Respondent as "partner investments"—to its entire hourly nonunion workforce. The new wage rates were implemented on August 1, 2022 and benefits were rolled out shortly thereafter. The General Counsel alleges that Starbucks took this action in response to union organizing and in order to discourage employees from organizing and further that, during the month-long lead up to its May 3 announcement, it repeatedly violated the Act by making unlawful statements aimed to discourage employees from organizing.

A. Respondent's employee communications practices

Respondent asserts that it values its "strong, direct communication" with store-level partners and takes seriously its "commitment to listen and respond to partner feedback." Respondent's Partner Guide (i.e., employee handbook) offers partners multiple channels for providing input to management, including participating in "Partner Open Forums, town halls and webcasts." Partners are also directed to the "Partner Hub," a proprietary intranet site Respondent uses to communicate with its employees. Partners can access materials on the Partner Hub on in-store computers; access to certain materials on the Partner Hub is restricted based on the partner's position within the company. (Tr. 177; Jt. Exh. 78; GC Exh. 140 at 45.)

Respondent communicates weekly with partners by issuing updates on the Partner Hub, which functions effectively as an electronic bulletin board for stores nationwide. Certain portions of the weekly updates are communications directed to and only accessible by managers and other portions are directed to the store's baristas and shift supervisors (i.e. hourly partners) at the stores. The weekly updates may be printed and posted in the workplace for ease of reference but there is no corporate policy or requirement that this takes place. (Jt. Exh. 80.)

During the COVID-19 pandemic, Respondent "leveraged virtual communication" as a means of communicating with its workforce, including in its response to the union organizing campaign. Respondent also relied heavily on its public communications platforms, including its official public website, https://starbucks.com, and maintained a separate public website, https://one.starbucks.com, dedicated to messaging on its employee benefits and programs and the ongoing organizing campaign among its workers. (Jt. Exh. 80; Tr. 177.)

B. Union organizing in Buffalo and the prior 2022 mid-year wage increase

Given the nature of the allegations, a synopsis of Respondent's recent wage and benefit practices is in order. As noted, the first known union organizing activity at Respondent's stores occurred in Buffalo in August 2021. Beginning there, employees began the practice of notifying Respondent of their organizing activities by transmitting a "Dear Kevin" or "Dear Howard" letter[3] stating that they intended to file a petition for a representation election. At three Buffalo-area stores, "Dear Kevin" letters were sent on August 23, followed by representation petitions filed on August 30.

Prior to 2021, Respondent had typically increased its partners' hourly wage rates every January. However, on October 27, 2021, it announced that, effective August 29, 2022, it would increase wages nationwide to the greater of $15 per hour or 2%, as well as a seniority-based raise of 3% for partners with two or more years' tenure. It is undisputed that Respondent explicitly withheld the August 29 nationwide increase from the three Buffalo stores whose employees sought union representation. (Jt. Exhs. 6, 7, 38 & 80 ¶ 25, ¶ 28.)

In March 2023, Administrative Law Judge Michael A. Rosas found that Respondent's announcement of the August 29 raise was unlawfully motivated by union activity in Buffalo and was aimed at influencing future union activity beyond the Buffalo market. Specifically, he found that, by announcing the raise, Respondent had violated the Act by promising employees increased benefits and improved terms and conditions of employment for refraining from union activity. He also found that Respondent had violated the Act by holding "listening sessions" with employees who were currently seeking union representation; during these sessions, he found, Respondent unlawfully solicitated grievances and promised of benefits. See *Starbucks Corp.*, Case No. 03–CA–285671, JD–17–23, 2023 WL 2327467 (Mar. 1, 2023).

C. The second 2022 mid-year "partner investments"

Respondent's business records indicate that, when the company announced its initial mid-year increase in October 2021, it had planned to return to its historical pattern of granting annual raises in January. (Jt. Exh. 7.) Instead, however, Respondent again broke with that practice by granting the wage and benefit increase at issue in this proceeding—likewise withholding the annual increase from partners at its unionizing stores.

As it had with the prior mid-year increase, Respondent granted the August 1 raise solely to partners classified as "nonunion." The parties stipulated that an employee was disqualified for this designation if any of the following were true as of August 1, 2022:

(a) the employees at their work site (i.e., store) had voted to be represented in collective bargaining by a union that had been certified by the Board;

[3] These designations referred to the names of the letters' CEO-recipient, (i.e., "Kevin" Johnson or "Howard" Schultz).

(b) a union had filed a petition with the Board (including a showing of interest by employees) be selected as such a representative for their store but no certification had issued with respect to representation; or

(c) partners at their store had notified Respondent via a "Dear Kevin" or "Dear Howard" letter that they intended to file an election petition (which was in fact eventually filed).

Consistent with the parties' stipulation, employees in category (a) are referred to herein as "unionized partners," while those described in categories (b) and (c) are called "unionizing partners." (Jt. Exh. 80 ¶¶ 22–24.)

On May 3, 2022—while its workforce waited to receive the prior-announced August 29 increase—Respondent announced that it would, effective August 1, raise pay to the greater of $15 per hour or 3% and grant an enhanced seniority-based increase of 5% for 2–5 years' experience and 7% for more than five years. In effect, the wage increase at issue in this proceeding was sandwiched between the announcement and implementation of the prior-announced nationwide pay raise. The General Counsel alleges that Respondent's pay raise increases for its nonunion partners, while withholding the same increases from its unionized and unionizing partners, violated Sections 8(a)(3) and (1) of the Act. (Compl. ¶ 13.)

Respondent also rolled out numerous benefits for nonunion partners, while withholding them from unionized or unionizing partners. These included:

APPROX. 2022 IMPLEMENTATION DATE	BENEFIT
June 20	Black Aprons and Coffee Master programs (with the ability to visit Respondent's coffee farm)
August 8	Barista Craft Training program
August 29	Dress code changes, including allowing extended color options, crewneck sweatshirts, jeggings, and white shoes.
August 30	Additional 15 minutes for Performance & Development Conversations ("PDCs") between partners and managers
September 16	Free t-shirts to partners who completed the Barista Craft Training program
September 19	"My Starbucks Savings Program," which provides contributions to participating employees' savings accounts ($50/month, $25/quarter and a $50 bonus for a balance of $400) and "Student Loan Management Tools"

October 1 Enhanced accrual rate for earning sick time (increasing accrual rate from 1:30 to 1:25 hours worked)[4]

(Jt. Exh. 80 ¶¶ 29–35.) The General Counsel alleges that Respondent's grant of these benefits to its nonunion partners while withholding them from its unionized and unionizing partners violated Sections 8(a)(3) and (1) of the Act. (Compl. ¶ 15, ¶ 16.)

D. Respondent's explanation for its enhanced "partner investments"

The record contains only limited evidence regarding why Respondent decided to double down on its wage and benefit increases for nonunion (and nonunionizing) partners during the middle of a nationwide organizing campaign. Indeed, apart from hearsay contained within business records, Respondent offered no explanation for actions, the identity of the decisionmaker(s) responsible, or even the date the decision(s) in question were taken. Communications between Rossann Williams (Executive Vice-President, Starbucks North America) and Denise Nelsen (Senior Vice President, Retail), however, indicate that Respondent opened its pocketbook in direct response to a concern that the Union was successfully campaigning on the issue of partner pay.

Emails between the two dated between March 24 and 28, 2022 show that Respondent was modeling out the finances necessary for a new increase and actively considering how to design a raise for tenured partners to respond to the ongoing organizing campaign. In particular, having received reports that "pro union partners" had been successfully campaigning on the issue of tenured partner pay, the executives discussed a plan (which was eventually implemented) to "lean in" on the issue by increasing the seniority-based increase from 3% (as announced in October 2021) to an unprecedented 5%. This increase was apparently envisioned as a one-time event, however, and one executive noted that it might be difficult to "message" Respondent's return to more conservative raises in the future. (Jt. Exh. 15.)

E. Respondent's public relations and union avoidance strategy

Respondent informed its workforce of its most recent wage and benefit changes on May 3, 2022. In the run-up to this announcement, however, management cultivated and promoted an 'origin story' that would be used to explain the wage and benefits increases: apparently, its nonunion partners had been "co-creating" with management to improve their terms and conditions of employment. As proof of this, Respondent widely publicized "collaboration sessions" between top management and groups of in-store partners; later, it would explicitly credit these sessions as the catalyst for the May 3 wage and benefit increases. (Tr. 183.)

[4] On October 12, 2022, Counsel for the General Counsel moved, without objection, to amend the complaint to allege the grant of this benefit. That amendment is granted. (Tr. 7–9, 58.)

1. April 2022: Howard Schultz returns and holds "collaboration sessions."

On April 4, 2022, Howard Schultz (Schultz) returned to Respondent's helm as Interim Chief Executive Officer (CEO). Schultz is a widely known and accomplished businessman who is credited with transforming Respondent from a regional coffee company into one of the world's top brands, having expanded its operations from eleven stores to more than 28,000 stores in 77 markets around the world. Before returning to the company in April 2022, Schultz served as its Chairman and Chief Executive Officer (CEO) from 1986 to 2000 and from 2008 to 2017.[5]

On his very first day back, Schultz (in Respondent's words) "challenged" partners to attend "collaboration sessions," which he personally began leading that same week. These sessions (also called "co-creation sessions") featured Schultz meeting, in-person and virtually, with small groups of 20–30 in-store partners in multiple U.S. cities, including: Atlanta, Denver, Chicago, St. Louis, Tarrytown, Wilmington, York, Washington DC, Nashville, Orlando, San Jose, Dallas, Phoenix, Portland, Long Beach, Los Angeles, San Diego, Seattle and San Francisco. (Jt. Exh. 33 and embedded videos). According to Respondent, these sessions—which involved attending employees suggesting changes to their terms and conditions of employment—were "limited to nonunion partners" (i.e., those working at a store at which no representation petition activity was known to have occurred).

Despite Respondent's professed commitment to partner communication, there is no mention of "collaboration sessions" in its Partner Guide. It appears, however, that the practice of collaboration sessions evolved from what had, during the Buffalo union organizing, been called "listening sessions." Although, as explained by Respondent's witness Vice President of Partner Resources Mayann Jensen (Jensen), Respondent has long had a tradition of "milk crate conversations" (i.e., store or district managers holding impromptu chats with store partners), there is no evidence, prior to the onset of organizing, of Schultz or any other senior-level executive meeting directly with store-level partners to discuss issues such as their pay and benefits.[6]

2. Respondent posts 'news' updates on the sessions.

Respondent used its official, publicly available website (https://starbucks.com) to promote the collaboration sessions by posting self-styled 'news' stories to a dedicated portion of the site (called "Starbucks Stories and News") that also featured more traditional press releases. On April 7, one of these "headlines" announced that, during the sessions, partners had begun "co-creating Starbucks next chapter." The piece featured multiple images of Schultz holding meetings with groups of partners across the country that would, the reader learned, "inform

[5] See https://stories.starbucks.com/press/2022/starbucks-founder-howard-schultz-takes-the-helm-as-starbucks-chief-executive-officer/; Profile from # Forbes400: The Definitive Ranking of the Wealthiest Americans in 2020, Forbes (Sept. 8, 2020), https://www.forbes.com/profile/howard-schultz/.

[6] I do not rely on Jensen's coached testimony (in response to a leading question) that she had, in the past, heard of either "listening sessions" or "collaboration meetings," mainly because she (who generally appeared to me a truth telling individual) immediately hedged her response to clarify that she was referring to a more generic employee benefits update for partners. (Tr. 181–182.)

future investments in partners." (Jt. Exhs. 16, 17.) Schultz' presence at the sessions was undeniably noteworthy, with the timing suggesting that they were one of his highest priorities.[7]

Throughout the month of April, Respondent used its various online platforms to spread the news that its nonunion partners were "co-creating." While actual participation in the sessions was limited to partners at approximately 30 sites, Respondent blanketed the internet with descriptions of the events, linking partners' participation at the events with forthcoming changes, with captions such as "Partners begin co-creating Starbucks next chapter." One such story, titled, "Inside collaboration sessions with Starbucks ceo Howard Schultz and partners," offered readers a play-by-play description of a typical session, alongside a pledge that "[p]artner feedback from the events will inform the company's future investments in its people and business operations."

According to Respondent's press-release articles, collaboration sessions lasted two hours and began with management placing a large poster on the floor inscribed with partner feedback that management had "heard," such as:

I'M NOT PAID ENOUGH	I need more Training
Many of us lack financial security	**MY PAYCHECK DOESN'T COVER ALL MY EXPENSES**

Later during in the session, the article explained, partners responded to posted questions such as, "[w]hat is the kindest thing the company could do right now for you?" with sticky notes posted to a large wall scroll. Individual partner responses included: "Increase pay so baristas feel more of an incentive to maintain our mission & values"; " "Pay for callouts"; and "More financial support for partners to grow financially." Partners then applied smaller, round stickers to "vote" for the ideas most important to them.

Notably, several partner "suggestions" highlighted by the article squarely foreshadowed the specific pay and benefits increases that Respondent would eventually announce, such as "a larger spread in pay between tenured partners and new partners; "Tip/wage—Partner after 2+, 5+, 10+ get a raise [indecipherable]" and "more apron options." Throughout the month of April, images of these handwritten sticky notes were included in numerous of Respondent's online postings regarding the collaboration sessions. In the 'news' articles, Schultz was characterized as mainly taking a listening role in the sessions but was known to inject questions such as, "Do you prefer higher wages and more cash or less benefits?" (See Jt. Exhs. 16, 17, 20, 21.)

During the month of April, Respondent posted several similar items online, in each case driving the message that partners were "co-creating" at "collaboration sessions." Respondent also used these postings to hype the personal attention Schultz was giving partners' issues

[7] See Jt. Exh. 80 ¶ 12.

(noting that he was holding the sessions because he felt that there had been "missteps" in failing to "invest more significantly in our partners and our stores"), as well as to play up his status as CEO (reporting a participant's effusive reaction, "You're here, you're listening to us. I mean you, literally are here in person, so that makes me super excited and proud. It's really special and important.").

Respondent's online media strategy also gave employees a glimpse into Schultz' own feelings about the ongoing union organizing; one article about the collaboration sessions mentioned that some "hot topics" had come up and, as an example, noted:

> Schultz shared an upsetting experience that illustrates his concerns with union organizers[8] intentionally and aggressively sowing divisions within the company while attempting to sell a very different view of what Starbucks should be.

(Jt. Exh. 17) (emphasis in original).

F. Respondent uses its online presence to signal upcoming changes and teases an upcoming "announcement" on May 3

As the April collaboration sessions continued, Respondent's online 'news' articles hinted that several upcoming "investments" were in the works for partners, while simultaneously linking partners' "feedback" and "co-creating" during the collaboration sessions to the upcoming changes. The suggestion ranged from relatively subtle (i.e., "the feedback that we receive from partners will play a critical role in informing our investments in partner experiences and business operations") to rather direct (i.e., "[f]eedback from partners will be incorporated into an announcement on May 3"). Id.; see also Jt. Exh. 16.

"May 3" began popping up in these tracts as a date on which Respondent would make an important announcement about "partner investments." Respondent drumrolled the May 3 announcement using its various online platforms, including posting weekly updates to its Partner Hub. In addition to relying on these communications as proof of Respondent's anti-union motive in granting benefits only to its nonunion partners, the General Counsel also alleges that certain of Respondent's statements amount to independent violations of Section 8(a)(1) of the Act.

[8] These words were the only items underscored in the article.

1. The April 15 report of Schultz' remarks[9]

On April 15, Respondent posted, via the Partner Hub, another 'news' article from its website. This article touted the ongoing collaboration sessions, promised that Schultz would be working with partners to "co-create" and reported him as having pledged, "we're going to make promises that we can keep."

Embedded within the article was a link to a video (also posted to the one.starbucks.com website) of Schultz speaking at an April 11 management-only event in which he was described as discussing "learnings from the collaboration sessions that are taking place over the course of April and promised to act on partner (employee) feedback." (Jt. Exh. 20) (emphasis in original).

In the embedded video, Schultz stated, in part:

> I want to be held personally accountable, not for any false promise, but for the commitment that I am making to all of you to make sure you know *I am listening and we are co-creating together and we are going to fix the near-term problems,* like maintenance people not showing up on time or maintenance people showing up not trained. *And we're going to fix the bigger issues of training, wages, and the other issues facing the company and the challenges that partners are having.*
>
> * * *
>
> In these co-creation sessions, I think what I've realized is that there's been many short-term decisions that have had an adverse long-term effect on the company. We're going to reverse that. *We're going to make much better long-term decisions that are going to have a short-term benefit for you.*
>
> * * *
>
> We have asked a lot of you and your partners during these last two years, and it's been difficult and challenging. Hold me accountable because *I promise you that we are going to make things better for you.* We're going to give you the tools and resources to do your job, and this provides you with more joy in the stores.

[9] The italicized portions of Schultz' remarks are alleged to violate Section 8(a)(1) as a promise of increased benefits and improved terms and conditions of employment for refraining in union organizational activity and/or as a solicitation of employee complaints and grievances, thereby implicitly promising such increased benefits and terms/conditions. See Compl. ¶ 5(a). By its post-hearing brief, the General Counsel withdrew other complaint allegations related to this announcement. See GC Br. at 10, n. 11.

(See Jt. Exh. 18–20.)

The article continued to describe a recent Seattle-area collaboration session, including pictures of Schultz intently listening to a partner address the group of in-store employees, as well as images of the "sticky notes" the partners had posted with their suggestions, including suggestions for "retention pay" and "additional tipping." The report noted that Schultz had opened the session by cautioning the attendees to be truthful and "reiterating 'this is not for show' and that insights would lead to rebuilding trust in each other and improvements to be announced as early as May 3." (Jt. Exh. 20.)

2. The April 25, 2022 weekly update[10]

On April 25, 2022, Respondent posted the following message regarding the collaboration sessions in a weekly update for partners on its Partner Hub:

> **Collaboration Sessions Continue**
>
> Howard and leaders continue to join partners for collaboration sessions across the country to help co-create solutions and reimagine the future of Starbucks together. At each session, partners are talking about their day-to-day realities with leaders and shared their hopes and ideas for the company. Here are some recommendations you've shared so far:
>
> - A regional "practice" store dedicated solely to providing real-time training, along with a general desire to improve the quality of training for everybody, whether it's teaching how to make increasingly complex drinks or ensuring that new managers are prepared to run their first store
> - Clear and consistent opportunities and follow-ups for those interested in career development and growth
> - More pay for the best performers at each level
> - More consistent scheduling
>
> Thank you for everything you have shared so far, including your participation in the Partner Experience Survey, and please continue to follow along on the Starbucks Stories site as we incorporate your feedback starting with an announcement on May 3.

[10] This announcement is alleged to violate Section 8(a)(1) as a promise of increased benefits and improved terms and conditions of employment for refraining in union organizational activity. See Compl. ¶ 6.

To the right of this message appear images of the familiar employee feedback sticky notes, containing handwritten suggestions such as, "increase pay so baristas feel more of an incentive to maintain our mission and values," "partners after 2+, 5+, 10+ get a raise" and "better training for ALL level partners." (Jt. Exh. 22.)

3. The May 2, 2022 weekly update[11]

While the bulk of Respondent's "partner investments" were announced on May 3 (as advertised), Respondent singled out one benefit as a 'preview' in its May 2 Partner Hub weekly update. On May 2, 2022, Respondent posted a weekly update item on the Partner Hub captioned, "It's Official! Coffee Master and Black Aprons Are Returning." Besides literally providing partners with black aprons, the "Coffee Master" program included significant perks, including educational classes and a chance to travel to Respondent's coffee farm in Costa Rica. True to form, Respondent reminded its workforce that they had collaboration sessions and co-creating to thank for the new perks, explaining:

> [t]hrough recent Collaboration Sessions, partner surveys and feedback on Workplace and the Hub, you've told us that feeling recognized for this passion and commitment to coffee is important to you. That's why we are bringing back Coffee Master and black aprons for all roles!

(Jt. Exh. 23.) The update then instructed readers to tune into Respondent's second quarter earnings call[12] scheduled for the following day by following a link to its "investor relations" website (https://investor.starbucks.com), noting that the call would contain information about Respondent's business performance, as well as to hear about "areas of focus on the upcoming quarter and more." Without explicitly stating that the call would contain information about partner's working conditions, the update ended with another tease:

> Heads up: be on the lookout for an update from Howard this week coming out of our partner co-creation sessions!

Id.

[11] This announcement is alleged to violate Section 8(a)(1) as a promise of increased benefits and improved terms and conditions of employment for refraining in union organizational activity. See Compl. ¶ 10.

[12] An "earnings call" refers a presentation given by management of a public company regarding its financial results during reporting period (such as a calendar quarter) and typically involves questions from analysts, investors, and the media. See https://dictionary.cambridge .org/dictionary/english/earnings-call.

G. April 3: Schultz drops news of the increases during Respondent's live-streamed earnings call.[13]

On May 3, 2022, Schultz used the "teased" Q2 earnings call (linked through the Partner Hub) to break the full news of upcoming wage and benefit increases. While briefly addressing other topics (such as inflationary pressures and Respondent's business in China), his presentation was primarily focused on Respondent's partners.

Since returning to the company, Schultz assured the audience, he had "met with thousands of Starbucks retail store partners." Without much by way of a transition, he then pivoted to the COVID pandemic, suggesting that it had caused "dramatic changes in customer behavior that Starbucks stores and systems were not designed or built for" and that this had "placed tremendous strain on our US store partners." He added that the pandemic had inhibited Respondent's efforts to improve its physical capital (i.e., store design, technology, etc.) but that now it would "be making investments in our partners and business to literally catch up on investments we have not made…" This, he explained, would serve the goals of increasing profitability "and most importantly reducing strain on our partners." (Jt. Exh. 24 at 3–4.)

1. The raise and benefits announcement

Schultz then announced that Respondent had "identified over $200 million of investment. . .in training, wage and equipment" designed to improve retention and recruiting, as well as "elevate the experience we deliver to our partners and our customers." He then announced that Respondent would be reintroducing its "Black Apron Coffee Master" and "Origin Trip" programs for partners. (Id. at 5.) He next directly addressed the union organizing campaign, stating that, while he understood that "young people" and "Gen Z Americans"—under pressure from the 2008 global financial crisis, the Great Recession, and not the global coronavirus pandemic—understandably viewed "the burgeoning labor movement" (which he actually described as "a movement in the media and across multiple industries") as a "possible remedy." "Yet," he continued, "we have a very different and vastly more positive vision for our company based on listening, connecting and collaborating directly with our people." (Id. at 6–7.)

Next, Schultz zeroed in on the big announcement Respondent had told partners to tune in for. Touting Respondent's status as an industry leader in providing employee benefits, he explained that, "[e]nsuring success through wages and benefits with our partners is among our core values and has been for 50 years. And our values are not and never have been the result of demands or interference from any outside entity. It's who we are, it's who we have been and who we always will be." He continued:

> *Compare any union contract in our sector to the constantly expanding list of wages and benefits we have provided our people*

[13] The portions of the announcement italicized below are alleged to violate Section 8(a)(1) as a statement of futility and a promise of increased benefits and improved terms and conditions of employment for refraining in union organizational activity, respectively. See Compl. ¶ 7. By its post-hearing brief, the General Counsel additionally asserts that they constitute a coercive threat that unionization will result in loss of wages and benefits.

> *for decades, and the union contract will not even come close to what Starbucks offers.* We remain committed to doing the right thing for each and every Starbucks partner, and that includes respect for differing opinions, inclusion, and embracing diversity and individuality.
>
> Today, we take further steps to modernize our pay and benefits vision for our partners with further investments in wage, barista skills training, coffee excellence and financial wellness and literacy. And in September, we will share additional initiatives we are planning for Starbucks partners in areas that include help with student loan refinancing, additional skills recognition programs, enhanced in-app tipping and new profit-sharing initiatives.
>
> *Partners at Starbucks US company-operated stores where we have the right to unilaterally make these changes will receive these wages and benefit enhancements. This covers more than 240,000 Starbucks partners at roughly 8,800 Starbucks stores across the country. We do not have the same freedom to make these improvements at locations that have a union or where union organizing is underway.* Partners at those stores will receive the wages increases that we announced in October 2021, but federal law prohibits us from promising new wages and benefits at stores involved in union organizing and by law we cannot implement unilateral changes at stores that have a union. Where Starbucks is required to engage in collective bargaining, we will negotiate in good faith. Starbucks will not favor or discriminate against any partner based on union issues. And we will respect the right of Starbucks partners to make their own decisions when exercising these rights.

(Id. at 7) (italics added).

2. Analysts question the need for another partner raise.

Schultz' remarks were followed by those of other company executives on a range of issues and then a question-and-answer session with the participating outside investment analysts. The first question posed to Schultz focused on the announced wage increase, with the analyst noting that Respondent was already "ahead of the curve…certainly on wages" and probing his explanation that "dramatic changes in customer behavior" justified the additional wage hike. Schultz essentially gave a non-response, referring to the collaboration sessions and stating, "we have to recognize that there is a lot of pressure on our people. We want to do everything we can, and so were going to raise wages again." (Id. at 12.)

A few questions later, another analyst appeared to query, albeit delicately, whether Schultz anticipated that the newly announced "partner investments" would be effective in fending off further union organizing:

> [Analyst]: Hi. Thanks for the question. So, Starbucks is well regarded as one of the best companies with leading comp and benefits. Very front-footed in terms of investment. Howard, as you've spoken to partners across the US, is sentiment towards the brand differ across markets or based on the tenor of the employees? Can you just talk about the differing factors there or partners relatively consistent in what they're looking for?
>
> Schultz: Because we are in a situation where anything we say or might say can be misinterpreted by outside attorneys that are trying to find ways in which Starbucks is at fault, I want to be very careful here. My prepared remarks need to be what we're going to say regarding the union issues. My comments and the emotional relationship that I had in these meetings with partners across the country were really quite extraordinary. The love that people have for the company, the challenges that they've had personally and professionally as a result of COVID, the responsibility that they feel Starbucks has, which we agree with to do everything we can to make their life better. But I don't want to go any further than that because I think the investments we're going to make for our people is a method to do everything we can to exceed their expectations, and we'll speak more about that in September.

(Id. at 18.)

3. The multiple May 3, 2022 announcements to employees

Schultz' earnings call announcement kicked off a marketing blitz about the upcoming boost in wages and benefits. On May 3 alone, Respondent posted to its various online platforms news of the changes—in the form of 'news' articles, "updates" and "FAQs"—not once, but five times.[14] These included a single-page flyer captioned "We are Creating Our Future Together as Partners" that contained a chart summarizing the new pay raises and benefits, as well as a multiple page "FAQ" document that identified August 1 as the implementation date for the pay increase. (See Jt. Exhs. 25, 26, 29–31, 79; R. Br. at 22.)

Respondent's announcements made clear that the new pay and benefits would take effect on August 1 and would only be given to nonunion partners.[15] This was accomplished by including

[14] Although the record is unclear as the precise order and manner in which these announcements were disseminated to the workforce, there is no dispute that they each were "posted" (i.e., either online or in the real world) on May 3.

[15] These statements, as set forth in Jt. Exhs. 29–31, are alleged to constitute a violation of Section 8(a)(1) as an unlawful promise of benefits. Compl. ¶ 9.

(or linking to) language purporting to explain "how" the benefits would be implemented. With minor differences, this "implementation" language typically stated:

> New pay and benefits changes will apply to stores where Starbucks has the right to unilaterally make these changes. Where Starbucks lacks the right to unilaterally make these changes (for example, stores where there is a union or union organizing) Starbucks will provide wage increases that were announced in October 2021 and will otherwise comply with all applicable legal requirements.
>
> * * *
>
> Starbucks Partners will receive all new wage, benefit and store improvement investments at all U.S. company-operated stores where Starbucks has the right to unilaterally make these changes. However, at stores where workers have union representation, federal law requires good faith collective bargaining over wages, benefits and working conditions which prohibits Starbucks from making or announcing unilateral changes. Where Starbucks is required to engage in collective bargaining, Starbucks will always negotiate in good faith. Also, at stores involved in union organizing (for example, where election petitions have been filed), Starbucks cannot lawfully announce new wages, benefits and changes because these might positively or negatively affect employee choices about unions. For these reasons, Starbucks cannot determine or predict whether the new wage, benefit and store improvement investments will be implemented at stores that have union representation or are involved in union organizing, but consistent with the law, the wage increases announced last October 2021 will be implemented at these stores. Starbucks reaffirms the right of Starbucks partners to organize, and Starbucks will not favor or discriminate against any partners based on their sentiments for or against unions.

(Jt. Exh. 29–31; Tr. 188–189.)

5. Respondent publicizes that its nonunion partners gained enhanced pay and benefits by requesting them in collaboration sessions.

During the week following the May 3 announcements, Respondent continued to barrage partners with "updates" which chiefly served to hammer home the idea that nonunion employees had "collaborated" their way into raises and improved benefits. On the Partner Hub, Respondent posted a letter from Schultz addressed to "All U.S. Partners" stating that the company was implementing pay increases and reintroducing black aprons, its Coffee Master program and Leadership in Origin trips "as a direct result" of the feedback partners had given him during the

recent collaboration sessions. Schultz' letter also included a QR code leading to the above-referenced "Implementation of Benefits" message on one.starbucks.com. (Jt. Exh. 26.)

On May 4, Schultz spoke to approximately 9,000 partners virtually and in person during an "open forum" about the "new investments in partners"; two days later, Respondent posted a 'news' article featuring video clips of Schultz informing the attendees, the "historic" investments Respondent was making had been:

> inspired by partner feedback through surveys, internal channels like Workplace and the Partner Hub, as well as 30 collaboration sessions held with retail partners last month, where partners shared ideas on what they wanted the next chapter of Starbucks to be.

(Jt. Exh. 33.) During the same week, Respondent posted a video to its official YouTube channel offering footage and stills from collaboration sessions, including view of Schultz sitting alongside a group of partners and imploring them, "How can we do better? What do we need to do to restore trust and belief throughout the company?" and then gazing intently at a young participant, who appears to be communicating with the group. (Jt. Exhs. 27, 80 at ¶ 19.)

Next, the video featured partners posting "sticky notes" on which they had written their suggestions, with some reading their ideas out loud; one partner told the camera, "we'd like to see a larger spread in pay between tenured partners and new partners." Focusing in on the posted sticky notes, the written narration stated, "[t]hese great ideas are inspiring us to think boldly and act quickly…our path forward starts now. Here's a preview of what's coming…" In the shots that followed, the pay and benefit improvements announced on May 3 were listed, in each case framed by a graphic border made of partners' sticky-note suggestions, such as:

(Jt. Exh. 27.)

5. Respondent continues to link the wage and benefit increases to collaboration and "co-creating," while warning that partners in petitioning stores risked losing benefits in collective bargaining.

Following the week of its initial rollout, Respondent continued to hammer its workforce with 'news' they could not possibly have missed: that nonunion partners were getting wage and benefit increases that had been spurred by the recent collaboration sessions. Respondent used these repeated announcements to tout the efficacy of its collaboration sessions as compared to the process of union representation and collective bargaining.

Beginning in the first week of June, the company began posting "progress updates" on its "partner investments" on the Partner Hub, its official website and its one.starbucks.com website. The June "30-Day Progress Update" alerted readers that—as previously announced—the pay increase would take effect on August 1, while the new benefits were planned to "launch" on June 20. The update contained a header reminding the reader, "[y]ou are part of **co-creating** the future of Starbucks. You have a **voice**, you are **heard**, you can **make a difference**." (emphasis in original). The document also contained the standard "implementation" disclaimer, explaining:

> New pay and benefits changes will apply to stores where Starbucks has the right to unilaterally make these changes. Where Starbucks lacks the right to unilaterally make these changes (for example, stores where there is a union or union organizing), Starbucks will provide wage increases that were announced in October 2021 and will otherwise comply with all applicable legal requirements.

The document then included a QR code connecting the reader to the lengthier, above-referenced "Implementation of Benefits" document at one.starbucks.com website. (Jt. Exh. 37, 80 ¶ 15, 21.)[16]

Respondent continued to link the new wages and benefits directly to the nonunion co-creating and collaboration sessions; in a posting on June 16, 2022, it reported that its executive leaders had met with store partners for "almost a month" that spring, and that "[t]hemes from those sessions led to a series of new investments in partners announced [by Schultz] in May." (Jt. Exh. 40.) Respondent's messaging aimed at employees working at stores where a union

[16] The parties stipulated that the one.starbucks.com updates were posted at the https://one.starbucks.com/get-the-facts/get-the-facts-starbucks-shares-update-on-partner-commitments/ and set forth in the record at Jt. Exh. 36 and Bates numbered R-0000364–370. See Jt. Exh. 80 ¶ 15. This appears to be an error, as that exhibit in the record, while consisting of a portion of the stipulated document, is a single-page document bearing a different Bates number (R-0000807). I take administrative notice that the complete posting located at the webpage stipulated by the parties contains the same updates (and accompanying "announcement") as that contained in Jt. Exh. 37 (Respondent's official website version), and I will therefore rely on that text.

representation petition had been filed was not much more subtle; in its weekly update on the Partner Hub for June 20–26, Respondent included the following message:

> **A Reminder on Benefits Implementation:**
>
> We're unfortunately seeing some misinformation that Starbucks will take benefits away from partners who are in the petitioning process. Here are the facts we want you to know:
>
> - In stores represented by a union, federal law requires good faith collective bargaining over all wages, benefits and working conditions. That means Starbucks cannot make promises or guarantees about any benefits. For example, even if we were to offer a certain benefit at the bargaining table, a union could decide to exchange it for something else. Simply put, its difficult to predict the outcome of negotiations, and each stores negotiation may look different.
>
> - What we can say for sure, is that Starbucks will always bargain in good faith.

(Jt. Exh. 42.)

III. ANALYSIS

Section 7 of the Act guarantees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities of the purpose of collective bargaining or other mutual aid or protection." Section 8(a)(3) of the Act prohibits an employer from discriminating against employees to hinder or promote union membership.[17]

The General Counsel alleges that Respondent violated Section 8(a)(1) and (3) of the Act by intentionally withholding wage and benefit increases in response to union organizing and additionally independently violated Section 8(a)(1) by making unlawful announcements promising to address partners' concerns, informing them that union organizing was futile and informing them that only nonunion partners would receive the new pay and benefits.

Respondent claims that the General Counsel has failed to establish that Respondent acted with an anti-union motive in restricting the increases to nonunion partners and in fact did so in a good-faith attempt to comply with the federal labor law. With respect to the independent 8(a)(1) allegations, Respondent claims that its communications, when viewed in their proper context, were protected by Section 8(c) of the Act, which permits non-coercive employer speech opposing union organization. Respondent also claims that the General Counsel failed to prove

[17] Conduct which violates Section 8(a)(3) necessarily interferes with the exercise of rights guaranteed by Section 7 of the Act, so such conduct also violates Section 8(a)(1).

that the alleged 8(a)(1) statements were disseminated to "employees" within the meaning of the Act.

A. The 8(a)(3) Allegations

The issue at the heart of this case is whether, under current Board law, Respondent was entitled to explicitly reward employees—in the middle of a nationwide union organizing campaign—for forgoing union activity (in favor of nonunion "collaboration sessions"), while falsely telling its workers that the federal labor law forced it to take this action. It was not.

1. Legal standards

A violation of Section 8(a)(3) of the Act "normally turns on an employer's antiunion purpose or motive." *800 River Rd. Operating Co. LLC v. NLRB*, 784 F.3d 902, 908 (3d Cir. 2015); see also *Radio Officers' Union*, 347 U.S. 17, 44 (1954) ("That Congress intended the employer's purpose in discriminating to be controlling is clear.").

Thus, where an employer is accused of granting a benefit for the purpose of dissuading its workers from pursing their right to organize and seek representation by a union, the Board will typically require proof of motive. See *United Airlines Services Corp.*, 290 NLRB 954, 954 (1988) (citing *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964)); see also *Network Dynamics Cabling*, 351 NLRB 1423, 1424 (2007) ("regardless of whether the union has filed a petition for an election," the "analysis is 'motive-based'"; the Board "must determine whether the record evidence as a whole, including any proffered legitimate reason for [granting the benefit], supports an inference that [it] was motivated by an unlawful purpose to coerce or interfere with . . . protected union activity") (citations omitted).

In a similar vein, the Board has long recognized that an employer has a right to treat represented and unrepresented employees differently, so long as the different treatment is not discriminatorily motivated. In *Shell Oil*, the Board applied this principle in the context of a differential wage increase, rejecting the argument that the respondent-employers had unlawfully denied wage increases to represented employees while granting increases to unrepresented employees, explaining:

> Absent an unlawful motive, an employer is privileged to give wage increases to his unorganized employees, at a time when his other employees are seeking to bargain collectively through a statutory representative. Likewise, an employer is under no obligation under the Act to make such wage increases applicable to union members, in the face of collective bargaining negotiations on their behalf involving much higher stakes.

77 NLRB 1306, 1310 (1948). Thus, it has long been established that "the mere fact that different offers are made or that different benefits are provided does not, standing alone, demonstrate unlawful motive." *Sun Transport, Inc.*, 340 NLRB 70, 72 (2003); see also *Empire Pacific Industries*, 257 NLRB 1425, 1426 (1981); *B.F. Goodrich Co.*, 195 NLRB 914, 914–915 (1972).

At variance with this analysis is the Board's "inherently destructive" doctrine. Recognized by the Supreme Court approximately twenty years following the Board's *Shell Oil* decision, this principle dictates that, where employer conduct so tends to discourage union activity (i.e., is so "inherently destructive" of employees' statutory rights), it "bears 'its own indicia of intent,'" and an unlawful purpose will be inferred absent direct evidence of unlawful motivation. See *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26, 34 (1967). While the Board has found that deliberately withholding an existing benefit (i.e., one deemed to constitute an established term and condition of employment) based on employees' union membership is inherently destructive, see, e.g., *Arc Bridges,* 355 NLRB 1222 (2010), it has not explicitly held that taking the same action with respect to a *new* benefit likewise merits an inference of discriminatory purpose.

The General Counsel seeks to use this case as a vehicle to overturn *Shell Oil* and find that Respondent's conduct is inherently destructive under the Act. At hearing, however, Counsel for the General Counsel stipulated that, absent an overruling of *Shell Oil*, the government is *not* alleging Respondent's conduct to be otherwise inherently destructive (i.e., that the *Great Dane* doctrine in effect supersedes and supplants *Shell Oil*). (Tr. 160.) Whether Board precedent should be reversed is for the Board, not me, to decide. *Waco, Inc.*, 273 NLRB 746, 749 n. 14 (1984); see also *Austin Fire Equipment, LLC*, 360 NLRB 1176 n. 6 (2014). Accordingly, my determination of Respondent's motive will be limited to and governed by the Board's *Wright Line*[18] framework.

2. Respondent withheld wages and benefits from prounion partners while awarding them to partners who refrained from union activity in order to dissuade employees from engaging in their protected right to organize for purposes of collective bargaining.

a. The *Wright Line* standard

Under *Wright Line*, the elements required to support the government's prima facie case are union and or other protected activity by the employee, employer knowledge of that activity, and antiunion animus on the part of the employer. *East End Bus Lines, Inc.*, 366 NLRB No. 180 (2018), slip op. at 1; see *Allstate Power Vac., Inc.*, 357 NLRB 344, 346 (2011) (citing *Willamette Industries*, 341 NLRB 560, 562 (2004)); see also *Austal USA, LLC*, 356 NLRB 363, 363 (2010). Once the General Counsel makes that showing, the burden of persuasion "shift[s] to the employer to demonstrate that the same action would have been taken even in the absence of the protected conduct." *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004) (citing *Wright Line*, 251 NLRB at 1089); see also *Cintas Corp.*, 372 NLRB No. 34, slip op at 5 (2022) (citing *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007)).

Finally, where the employer's proffered reason for withholding benefits from employees engaged in Section 7 conduct is found to be pretextual—that is, either false or not in fact relied upon—this supports a finding that the action was in fact discriminatorily motivated. See generally *Approved Electric Corp.*, 356 NLRB 238, 239–240 (2010); accord: *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1966); *Pro-Spec Painting, Inc.*, 339 NLRB 946,

[18] *Wright Line*, 251 NLRB 1083 (1980), enfd, 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

949 (2003). When the stated motives for an employer's adverse actions "are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the respondent desires to conceal." *Fluor Daniel, Inc.*, 304 NLRB 970, 970 (1991) (citing *Shattuck Denn Mining*, 362 F.2d at 470), enfd. 976 F.2d 744 (11th Cir. 1992).

b. The *Shell Oil* motive standard for differential grants of wages and benefits

As discussed, under *Shell Oil* and its progeny, an employer may treat represented and unrepresented employees differently when providing new benefits, so long as the disparate treatment is not unlawfully motivated. 77 NLRB at 1310. Such conduct will be found to violate the Act, however, where there is independent evidence of an unlawful motive for the grant of benefits. See, e.g., *Phelps Dodge Mining Co.*, 308 NLRB 985, 996 (1992). While the Board does not follow a "rote formula" in determining whether evidence supports a reasonable inference of discriminatory motive, see *Starbucks Corp.*, 372 NLRB No. 122, slip op. at 3, n. 13 (2023), it has also explicitly instructed that "clear evidence" of unlawful motive is present where a differential grant of benefits is "accompanied by statements encouraging the employees to abandon collective representation in order to secure the benefit." *B.F. Goodrich*, 195 NLRB 914 at 915, n. 4.

Evidence of unlawful motive may also be found in the timing of a grant of wages and benefits. Indeed, accelerating the timing of a such a wage or benefit increase alone may indicate that it was intended to discourage employees' protected conduct. As the Supreme Court has explained,

> The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

Exchange Parts, 375 U.S. at 409; see also *McAllister Towing & Transp. Co.*, 341 NLRB 394, 399 (accelerating timing of mid-year wage increase during preelection period violated the Act), enfd. mem. 156 Fed. Appx. 386 (2d Cir. 2005). "Similarly, an employer cannot time the announcement of the benefit in order to discourage union support, and the Board may separately scrutinize the timing of the benefit announcement to determine its lawfulness." *Mercy Hospital Mercy Southwest Hospital,* 338 NLRB 545, 545 (2002); see also *Reno Hilton*, 319 NLRB 1154, 1154–1155 (1995); *Capitol EMI Music*, 311 NLRB 997, 1012 (1993), enfd. 23 F.3d 399 (4th Cir. 1994).

This analysis applies not only to promises or conferral of benefits after a representation petition has been filed but also during an organizational campaign before a petition has been filed. *Field Family Associates*, 348 NLRB 16, 17 (2006) (citing *Curwood Inc.*, 339 NLRB 1137, 1147–1148 (2003), enfd. 397 F.3d 553–54 (7th Cir 2005).

c. Employer obligations (and options) when granting benefits during union organizing

The Board holds that, as a general rule, in deciding whether to grant benefits while union organizing is underway, an employer should act as it would if a union were not in the picture. *Care One at Madison Ave.*, 361 NLRB 1462, 1475 (2014), enfd. 832 F.3d 351 (D.C. Cir. 2016); *Associated Milk Producers, Inc.*, 255 NLRB 750, 755 (1981); *Great Atlantic & Pacific Tea Co.*, 166 NLRB 27, 29 n. 1 (1967), enfd. in relevant part 409 F.2d 296 (5th Cir. 1969). Here, Respondent announced and implemented favorable changes to partners' wages and benefits nationwide but explicitly carved out those employees working at stores where organizing had or was occurring. Respondent admits, in other words, that it doled out higher wages and enhanced benefits *based* on the presence or absence of union organizing at a particular store. It did not proceed, as the law required it to do, as though there was no ongoing union campaign.

Throughout this proceeding, Respondent has insisted that it was forced to withhold the wage and benefit increases from its unionized partners in order to avoid being charged with making an unlawful unilateral change without bargaining with the union and attempting to unlawfully influence organizing and representation proceedings underway. This ignores two basic aspects of the law. First, according to established Board law, had Respondent in fact wished to give its unionized partners the same increases it granted its nonunion partners, it could have simply asked the Union for permission and thereafter granted the increase without violating the law. *Arc Bridges,* 362 NLRB 455, 459 n. 18 (2015); see also *10 Roads Express, LLC*, 372 NLRB No. 105, slip op. at 2 (2023) (finding no violation of Section 8(a)(3) or (5) where employer offered, and union rejected, wage increase on same terms it granted to unrepresented employees).

Likewise, Respondent's claim that it lacked the legal right to grant the increases to partners in its unionizing stores ignores an equally well-known safe harbor available to employers in Respondent's situation: an employer that advises employees that an upcoming raise or benefit will be deferred pending the outcome of the election to avoid the appearance of election interference—without blaming the increase on the presence of union organizing—will not be found to have violated the Act by withholding the raise or benefit. See, e.g., *Ansul, Inc*., 329 NLRB 935 (1999) (employer lawfully informed employees that it was delaying the announcement of the results of its wage review until after the election); see also *KMST–TV, Channel 46*, 302 NLRB 381, 382 (1991); *Atlantic Forest Products*, 282 NLRB 855, 858 (1987); *Centre Engineering, Inc.*, 253 NLRB 419, 421 (1980).

Based on the availability of these options, the Board, with court approval, has repeatedly rejected employers' claims that they were compelled—in order to avoid being charged with unfair labor practice charges—to withhold benefits based on their employees' union representation or organizing status. See *Woodcrest Health Care Cntr*., 366 NLRB No. 70, slip op. at 24 (2018) (citing *Care One at Madison Avenue, LLC v. NLRB*, 832 F.3d at 359–360), enfd. sub nom. *800 River Road Operating Co.*, 784 F.3d 902, supra; *Pennsylvania Gas and Water*, 314 NLRB 791, 793 (1993), enfd. 61 F.3d 895 (3d Cir. 1995); *Gerry's I.G.A.*, 238 NLRB 1141, 1153 n. 33 (1978), enfd. 602 F.2d 1021 (1st Cir. 1979); *Otis Hospital*, 222 NLRB 402, 404–405 (1976), enfd. 545 F.2d 252 (1st Cir. 1976); *Florida Steel Corp.*, 220 NLRB 260, 266 (1975), enfd. mem. 543 F.2d 1389 (D.C. Cir. 1976)).

d. Respondent's targeted withholdings evidenced anti-union animus.

Based on the parties' stipulations, there is no dispute that, during the winter and spring following its Buffalo employees' October 2021 petitions for representation elections, Respondent became aware of union organizing activity at various of its stores. As the parties have stipulated, Respondent implemented August 1 the wage and benefit increases for only those partners working at its stores that, as of the day it announced the increases (May 3) had not been the subject of an election petition or "Dear Kevin/Howard" letter as of the day it announced these benefits (May 3). The question is therefore whether the General Counsel met her burden to show that Respondent's decision not to extend the May 3-announced wages and benefits to only its represented employees was unlawfully motivated. For the reasons set forth below, I find that she did.

The evidence establishes that Respondent's conduct in withholding wage and benefit increases from union and unionizing employees was calculated to discourage union activity and support within the meaning of Section 8(a)(3) and (1) of the Act. Discussion between Respondent's top executives about "leaning in" with an unprecedented pay raise for tenured partners revealed that Respondent's double-down mid-year adjustment was devised, in part, to counter the Union's successful organizing based on this issue. Moreover, during its April run-up to the May 3 announcement, Respondent—as the Board had prefigured in *B.F. Goodrich*—deployed an online messaging strategy based on buzzwords like "collaboration" and "co-creating," that would leave no doubt in reasonable partners' minds that refraining from (or abandoning) any attempt to obtain union representation was their key to securing the upcoming pay raise and benefits. 195 NLRB at 915, n. 4. The persistent refrain that the nonunion collaboration sessions were singularly responsible for the new pay and benefits denied to those who instead sought union representation effectively "encourage[d] the employees to abandon collective representation in order to secure the benefit"; as such, they constitute "clear evidence" of Respondent's unlawful motive. Id.

Respondent's May 3 announcements were likewise designed to cement the idea that union membership and representation were financially disadvantageous. By blanketing its mostly nonunion workforce with the inaccurate message that a union presence at certain stores had made it impossible for Respondent to include them in the pay and benefit boosts, Respondent "aimed to provide a financial inducement to employees to become 'union-free' if they were not already so, and to stay 'union-free' if they already were." *Phelps Dodge Mining Co.*, 308 NLRB at 996 (employer violated the Act by devising and implementing quarterly appreciation program billed as for "union-free" employees). Respondent's goal was to dull its employees' appetite for collective bargaining by making it clear that organizing meant lower pay and benefits. Put more bluntly, its pay and benefit adjustments were an effort to "buy off" employees considering union representation.

Further indicative of Respondent's anti-union hostility was the "Wall of Sound" approach[19] it employed in rolling out the new pay and benefits. While Respondent cleverly packaged and disseminated its "co-creating" narrative, its month-long assault on its partners' right to freely choose union representation was hardly subtle. Where an employer inundates its employees with a "plethora of announcements of new benefits" as part of a "campaign to highlight new benefits for non-represented employees and to emphasize that the benefits were being withheld from unit employees," it reveals its anti-union motive. See *Eastern Maine Med. Ctr.*, 253 NLRB 224, 243 (1980), enfd. 658 F.2d 1 (1st Cir. 1981); see also *Medo Photo*, 321 U.S. 678, 686 (1944) ("There could be no more obvious way of interfering with these rights of employees than by grants of wage increases upon the understanding that they would leave the union in return.").

Here, Respondent—through its multiple online media platforms—deluged partners with a seemingly endless chorus of announcements (including numerous graphics and videos) reiterating that nonunion partners had gained themselves extra pay and benefits by collaborating directly with Schultz in meetings that could not be attended by partners at union and unionizing stores. The most telling aspect of this communications strategy was its needless duplication; there was simply no point to inundating baristas and shift supervisors with multiple, layered iterations of the "nonunion equals more pay and benefits" message, except to quell the surge in union petitions being filed to represent Starbucks workers.

That Respondent's differential grant of pay and benefits was aimed to dissuade union organizing is also evidenced by the timing of its sudden generosity. Respondent's own business records indicate that, prior to the barrage of union representation petitions filed during the first three months of 2022, Respondent had planned to return to its historical practice of granting annual increases in January. Indeed, Respondent not only broke with its prior practice (i.e., granting an annual raise in January), but in fact raced to "doubled down" on the mid-year raise it had already announced following the onset of union organizing at three Buffalo-area stores (the Buffalo stores).

There is no evidence that either market forces or sheer altruism motivated Respondent to disrupt its already-disrupted normal pattern of wage increases to reward its nonunion partners. Indeed, the only thing that appears to have changed between Respondent's announcement that wages would go up on August 29 for its nonunion (i.e., Buffalo store) partners and its May 3 announcement of enhanced and accelerated wage and benefit increases for nonunion employees was that union organizing had spread beyond the three Buffalo stores. Under the circumstances, it was reasonably foreseeable that employees would understand that, rather than "bargaining against itself," as the expression goes, Respondent was in fact responding to the continued organizing by upping the ante to provide, via its nonunion "collaboration" process, whatever

[19] The "Wall of Sound" is a music production technique developed by record producer Phil Spector—described as a "Wagnerian approach rock & roll"—that employs a large array of musical instruments with multiple instruments doubling or tripling portions of the score, to create a fuller tone, often enhanced by reverb from an echo chamber for additional texture. The quintessential example is Ike and Tina Turner's 1966 recording, "River Deep, Mountain High." https://en.wikipedia.org/wiki/Wall_of_Sound.

financial benefits employees might hope to achieve through representation and collective bargaining.

This timing, which went unexplained by Respondent's sole witness Jensen, suggests an unlawful motive. *Mercy Hospital*, 338 NLRB at 545–546 (employer failed to meet its burden of showing legitimate basis for wage increase when its only witness on the subject had no knowledge of or participation in the timing of the wage increase announcement); see also *Hogan Transp., Inc.*, 363 NLRB 1980, 1983 (2016); *Woodcrest Health Care*, 366 NLRB No. 70 (employer's announcement and implementation of improved healthcare costs and benefits for all employees except those eligible to vote in the pending election was unlawfully motivated, as timing was a key factor); *Care One at Madison*, 361 NLRB 1462 (finding unlawful employer's timed announcement of its discretionary, one-time, system-wide reinstatement of a valued healthcare benefit just three weeks before a scheduled representation election, withheld those benefits from only its union-eligible employees, and offered "the pendency of the representation election" as its sole reason).

Finally, further evidence of an unlawful motive behind the increases may be found in Schultz' awkward effort to "sell" them to its shareholders on the May 3 earnings call. While acknowledging that Respondent was already an industry leader in wages and benefits, he floated the idea that "dramatic changes in customer behavior" had forced the unprecedented double-down, mid-year wage adjustment. Notably, after one investment analyst openly questioned this proffered rationale, Schultz' sole retort was that there was "a lot of pressure" on Respondent's partners. When another analyst raised the issue of what Respondent's partners were "looking for" and essentially queried whether the latest wage and benefit bump would satisfy them, Schultz stated that he had to stick to his prepared remarks where "the union issues" were concerned. But nobody had directly asked about such issues. All told, Schultz' non-answers were answer enough.

e. Respondent's defenses

Respondent offers three main defenses to its differential grant of pay and benefits.[20] None of these defenses is particularly amenable to a strict *Wright Line* analysis, in that Respondent is by definition incapable of demonstrating that it would have excluded its union and unionizing employees from the new wages and benefits even absent the fact that they were union and unionizing. At any rate, I will evaluate Respondent's three proffered explanations for its conduct.

Respondent primarily argues that it cannot be found to have acted with an unlawful motive because it only withheld the "partner improvements" from its union and unionizing employees to avoid violating the Act by increasing pay and benefits for its entire workforce. In a related argument, it claims that finding its conduct unlawful would subject it to an "inescapable unfair labor practice trap" in violation of the Constitution's Fifth Amendment. Finally, it claims that

[20] At hearing, I granted the General Counsel's motion to strike Respondent's affirmative defense numbered 21. See Tr. 226–230. To the extent Respondent's answer sets forth additional affirmative defenses not argued by Respondent in its post-hearing brief, I assume that they are intended to be preserved for the Board's consideration and will not address them in this decision.

the allegations against it are the result of the General Counsel's misconduct in actively promoting union organizing and collective bargaining.

(1) The legal compliance argument

Respondent's main explanation for its conduct is that it faced a "legal dilemma" that forced it to withhold the pay and benefit raise from its unionized and unionizing partners. Essentially, Respondent claims that it believed its duty to bargain under Section 8(a)(5) of the Act prevented it from granting its unionized partners the increases and additionally that granting the increases to unionizing partners would have run afoul of its duty to refrain from interfering with an ongoing organizing campaign.

As discussed earlier, the Board has considered and rejected similar defenses, particularly in the absence of convincing evidence that the decision to withhold benefits was in fact motivated by a concern over potential unfair labor practice charges. See, e.g., *Woodcrest Health Care*, 366 NLRB No. 70, slip op. at 6 (rejecting legal compliance defense where employer failed to "present testimony from its officials who actually made the decision to withhold, and there is no evidence in the record establishing how, when, or why the decision was made"); see also *Otis Hospital*, 222 NLRB at 404 (employer failed to establish that withholding promised wage increase after employees petitioned for an election was motived by concern over exposure to unfair labor practice charges where it presented no testimony or other evidence to that effect); *GAF Corp. v. NLRB*, 488 F.2d 306, 309 (2d Cir. 1973) (same).

Shouldering the burden of establishing the factual basis of Respondent's legal compliance defense was its sole witness, Jensen. She took no responsibility for the actual decision to withhold benefits, instead offering, in somewhat vague and disjointed testimony, that she had "several conversations" with unspecified individuals about the language of Respondent's May 3 announcement because she wanted to "make sure that were doing it lawfully." (She never explained whether "it" was the written announcement or the decision itself). Again, without reference to the actual decision to withhold benefits, she related her personal belief that federal labor law required Respondent to bargain with any union that had been certified before granting benefits to represented employees and furthermore prohibited Respondent from promising or "bribing" unionizing employees during an organizing campaign. (Tr. 185–186.)

Respondent's conduct, however, was not entirely consistent with Jensen's stated concerns. On May 2—the day before Schultz' big announcement—Respondent teased out in a weekly update that that it was reinstating its Coffee Master program and black aprons "**for all roles!**" with no caveat that union or unionizing partners were excluded. (Jt. Exh. 23) (emphasis in original). This would appear inconsistent with her (and Respondent's) professed claim to have assiduously avoided promising benefits to unionizing partners or granting them to those already represented by a union. Moreover, it suggests to me that Jensen did not have the final say even as to Respondent's messaging, let alone the underlying decision, regarding how partners would be treated based on their union affiliation.

All told, Jensen's testimony does not convince me that, at the time it determined to withhold the new benefits from its union and unionizing partners, Respondent had, as it claims, "conclud[ed] that a unilateral grant of new wage increases to union and unionizing partners involved material legal risk under Sections 8(a)(1) and 8(a)(5)." My determination that this was not the company's true motivation is reinforced not only by the facts described above establishing its antiunion motive (including the lack of any credible explanation for Respondent's sudden interest in "collaborating" and "co-creating" in the month-long period preceding its May 3 announcement) but also by the inexplicably tone-deaf reasoning Respondent now espouses to support its professed "good faith" effort to comply with the law.

Ultimately, accepting Respondent's "good faith" legal compliance defense would require me, in the absence of any credible evidence, to presume that Starbucks (and presumably its counsel)[21] so misapprehended basic labor law concepts that it considered itself compelled to deny wage and benefit increases on the basis of employees' union activities without even considering bargaining with the union or deferring its award of new pay and benefits for unionizing partners. In light of the otherwise compelling evidence of Respondent's antiunion motive, such an inferential leap is not warranted.

(2) The Fifth Amendment "Void for Vagueness" argument

Respondent also asserts that complaint in this case fails because the General Counsel's allegations, "set for employers an unescapable unfair labor practice trap" that renders this proceeding unconstitutionally vague pursuant to the Constitution's due process clause. (R. Br. at 27–28.) I disagree.

It is well established that a law is void for vagueness and, therefore, violates due process, if "men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926); *see also Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 44 (1991); *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). "The essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct." *Jordan v. De George*, 341 U.S. 223, 230 (1951); *see also Grayned*, 408 U.S. at 108. Although "the doctrine's chief application is in respect to criminal legislation," *Lopez-Lopez v. Aran*, 844 F.2d 898, 901 (1st Cir. 1988), it has also been applied to laws implicating fundamental constitutional rights, especially First Amendment rights. *See, e.g., Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982)).

A statute is not void for vagueness simply because it may be ambiguous or open to two constructions. *Williams v. Brewer*, 442 F.2d 657 (8th Cir. 1971). Even a law that establishes an "imprecise but comprehensible normative standard" is not unconstitutionally vague; rather, it must establish no standard at all. *Levas v. Village of Antioch*, 684 F.2d 446, 451–452 (7th Cir. 1982). Thus, an unconstitutional vagueness finding requires at the law in question be vague "'not in the sense that it [establishes] an imprecise but comprehensible normative standard, but

[21] To the extent that Respondent may implicitly rely on an advice-of-counsel defense, such defense is rejected. See *Woodcrest Health Care*, 366 NLRB No. 70, slip op. at 6, n. 13.

rather in the sense that no standard of conduct is specified at all.'" Id. (quoting *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971)); *see also Hoffman Estates*, 455 U.S. at 495 n. 7.

In support of its argument, Respondent cites decisions by courts of appeal that raise no issue of unconstitutional vagueness; rather than decrying the Act's failure to provide a comprehensible standard, these decisions lament the arguably difficult situation faced by an employer seeking to grant wage improvements or benefits in the midst of a union organizing campaign. But protecting employees' right to organize by requiring employers to navigate the Act's requirements is not the equivalent of failing to set forth a comprehensible standard for employer conduct. Indeed, that Respondent is apparently capable of laying out with precision the various Board formulae it complains hinder its exercise of entrepreneurial discretion reveals the true nature of its protest: not that the Board law leaves it in the dark as to what conduct is prescribed but rather that application of the Act subjects it to multiple, well-defined standards. See *United States v. Saunders*, 828 F.3d 198, 206–207 (4th Cir. 2016) ("regulatory complexity does not render a statute (or set of statutes) unconstitutionally vague") (citations and quotations omitted); *United States v. Zhi Yong Guo*, 634 F.3d 1119, 1122 (9th Cir.) ("We recognize that putting together the pieces of this regulatory puzzle is not easy. . . .[b]ut a statute does not fail the vagueness test simply because it involves a complex regulatory scheme or requires that several sources be read together…."), cert denied 564 U.S. 1027 (2011). As such, Respondent's void-for-vagueness challenge is without merit.

(3) The General Counsel misconduct argument

Respondent asserts that the General Counsel has, by prosecuting this case, taken a "policy decision" to urge the Board to "actively seek to promote union organizing" by elevating the Section 7 rights of its prounion employees over those of their colleagues. Assuming Respondent's standing to assert such a claim, I find it specious.

By its 1947 modification of Section 7 of the Act, Congress gave individual employees the right to refrain from joining or assisting a union. However, it in no manner indicated its intention to abandon the Act's explicitly declared central purpose, that is, to:

> encourage[] the practice and procedure of collective bargaining and protect[] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection.

Section 1 of the Act ("Findings and Policy"). To the extent Respondent otherwise quarrels with the official policy of the United States promoting collective bargaining, I can offer it no relief.

Respondent nonetheless argues that requiring it to adhere to its obligations under the Act, the General Counsel infringes on that Section 7 right by "removing from an employee's decision-making process the different ways in which unionization and collective bargaining (under the Act and current law) change the employer-employee relationship." As best I can comprehend, Respondent is claiming that an order requiring it to make whole one group of employees it

discriminated against for exercising their Section 7 right to organize will necessarily do injury to their colleagues' right to refrain from doing so.

This is simply not the case. Nothing in my recommended order prevents Respondent's partners from exercising their individual right to support or refuse to support a union, and Respondent continues to be free to continue to hold lawful "collaboration" or "co-creating" sessions with its nonunion partners. Nor can it fairly be said that the General Counsel is somehow 'biased' against the Section 7 right to refrain from organizing activity. The fact is that Respondent is simply not guilty of discriminating against its nonunion partners.

Respondent used its top executive to launch a corporate-wide effort to manipulate its employees' free choice by conditioning their pay and benefits on their willingness to forgo organizing—a direct attack on the Act's central goals. By seeking to hold Respondent to account for its discriminatory conduct, the General Counsel is simply enforcing the Act as written. Although it would certainly be more intellectually satisfying to whisk the parties back in time and permit Respondent's partners to exercise their right to free choice in the absence of Respondent's coercion and financial manipulation, this is not possible. By ordering Respondent to level the playing field between its union, unionizing, and nonunion employees, the law does the next best thing.

Accordingly, I find that, by granting above-described various pay and benefit increases to its nonunion partners, while withholding the same increases from its unionized and unionizing partners, Respondent violated Sections 8(a)(3) and (1) of the Act, as alleged in paragraphs 13, 15 and 16 of the complaint, as amended.

B. The Section 8(a)(1) allegations

Beginning the week Schultz returned as CEO, Respondent began using its various online platforms to program the idea that he was there to "co-create" with them to "fix" problems. Throughout the month of April, Respondent promoted its nonunion partners' collaboration sessions with top management, often with a suggestion that they were leading up to an important announcement on May 3. On that day, Respondent announced that its nonunion partners would receive wage and benefit increases but that it was forbidden from awarding the same to employees at stores where the Board had certified a bargaining representative or there was organizing activity.

The General Counsel argues that these communications constituted violations of Section 8(a)(1), and Respondent defends them as protected Section 8(c) employer campaign speech and further argues that the General Counsel failed to prove that the alleged 8(a)(1) statements were disseminated to "employees" within the meaning of the Act.

With the exceptions noted, I find that the alleged communications constituted independent violations of Section 8(a)(1) of the Act.

1. Respondent's dissemination defense

With respect to Respondent's defense that the allegedly unlawful communications were not disseminated to statutory employees, I agree with respect to two communications (admitted as Joint Exhibits 38 and 46) which the record shows were in fact directed at and disseminated to Starbucks' management, not its employees. As such, there is no evidence to support a finding that these statements amounted to unlawful promises of a benefit under Section 8(a)(1) of the Act. Accordingly, I recommend the dismissal of the corresponding portions of the complaint (paragraphs 11, 12 and 14).

The remaining alleged statements, however, were undisputedly posted (or linked to) by Respondent on the modern-day equivalent of a workplace bulletin board—its Partner Hub intranet site—explicitly for Respondent's partners to see. As such, I find that (unlike a situation in which a supervisor voices a coercive statement to a single employee who fails to comprehend it) these statements were effectively disseminated to employees for purposes of Section 8(a)(1).

2. Schultz' April 11 video remarks (Jt. Exhs. 18–20) and the April 25 Partner Hub weekly update (Jt. Exhs. 22)

The General Counsel alleges that Respondent violated 8(a)(1) by directing them (via the Partner Hub) to Schultz' April 11 video pledge to "fix" training, wages" and other "challenges that partners are having," accompanied by his assurances that "this is not for show" and "I am listening and we are co-creating together." While Schultz' remarks had originally been made to a management-only audience, Respondent repackaged them in one of its 'news' articles touting the collaboration sessions as evidence that management had been "learning" from the sessions. Notably, the article explicitly referenced "improvements to be announced as early as May 3." Respondent's April 25 directed messaging on the Partner Hub piggybacked on these representations by promising partners that Respondent would "incorporate your feedback" from the collaboration sessions "starting with an announcement on May 3."

As the Supreme Court has recognized, "threats or domination" are not required for an employer to improperly influence its employees' decision whether or not to support a union; "favors bestowed" can have the same effect. *Medo Photo Supply Corp. v. NLRB*, 321 U.S. at 686. Thus, it has long been established that an employer violates Section 8(a)(1) of the Act by promising benefits during a union campaign in order to dissuade its employees from supporting the union. See *NLRB v. Exchange Parts*, 375 U.S. 405; see also *Shamrock Foods Co.*, 366 NLRB No. 117, slip op. at 13 (2018), enfd. 779 Fed. Appx. 752 (D.C. Cir. 2019). Likewise, the solicitation of grievances during a union campaign is unlawful when it "carries with it an implicit or explicit promise to remedy the grievances and 'impress[es] upon employees that union representation [is] . . . [un]necessary.'" *Albertson's, LLC*, 359 NLRB 1341, 1341 (2013) (internal quotations omitted; alterations in original), affd. and incorporated by reference 361 NLRB 761 (2014).

Unlike most independent 8(a)(1) allegations, the determination of whether a promise (or implied promise through solicitation) violates the Act is motive-based, and the Board will find an employer to have violated the Act where it is found to have acted in order to curtail

unionization. *Curwood, Inc.*, 339 NLRB at 1147; *Exchange Parts*, 375 U.S. at 409. That benefits are not explicitly conditioned on rejecting the union is not controlling where an employer's conduct is shown to have been reasonably calculated to impinge on employees' right to self-determination. Id. Moreover, the solicitation of grievances during an organizing campaign inherently constitutes an implied promise to remedy them, even where the employer does not make a specific commitment to do so. *Capitol EMI Music*, 311 NLRB at 1007.

Here, the message that Schultz had retaken the reigns and was meeting personally with partners to "fix" problems in the wake of the recent organizing activity was a powerful one, driven home by his repeated assurances that his efforts were not merely for the sake of appearances. This constituted a classic example of an explicit promise of benefits coupled with a solicitation of further grievances or complaints implying that they will be favorably resolved. See, e.g., *American Freightways, Inc.*, 327 NLRB 832 (1999) (promise to "fix" complaints constituted "nothing less than an express promise" to grant what employees were seeking to obtain through union representation); see also *Horseshoe Bossier City Hotel & Casino*, 369 NLRB No. 80, slip op. at 1, n. 9 (2020) (employer's director of operations violated Section 8(a)(1) by asking employees, "what do you really want?" and writing down their responses); *National Hot Rod Assoc.*, 368 NLRB No. 26, slip op. at 1, n. 4 (2019) (employer's vice president of human resources violated Section 8(a)(1) by asking employees "for an opportunity to fix issues").

Respondent does not argue that Schultz' comments were protected by a past practice of soliciting grievances but rather that they were too vague to constitute promises or solicitations. I disagree. A high-level executive's promise to "fix" employees' wages frankly leaves very little to the imagination, particularly when featured alongside photographs of handwritten partner demands for pay and increased tips and the pledge, "I am listening." Respondent also claims that its effort to hold collaboration sessions at only nonunion stores (i.e., those for which petitions or Dear Howard letters had been presented) meant that Schultz' remarks could not reasonably be aimed at inducing employees to refrain from union organizing. This argument, quite frankly, proves too little. In the midst of a nationwide organizing campaign where the vast majority of its employees were still 'in play' in terms of supporting or rejecting union representation, Respondent deliberately blanketed its *entire* workforce with Schultz' message, pitching partners on the prospect of addressing their concerns with collaboration session—as opposed to pursuing representation and bargaining—with "improvements to be announced as early as May 3."[22]

Accordingly, I find that Schultz' promises of improved wages, training and other "challenges" facing problems, as contained in Respondent's April 15 'news' article and reiterated in its April 25 weekly update, constituted unlawful promises of benefits to refrain from engaging in organizing activity. I additionally find that, in view of the ongoing collaboration sessions, Schultz' remark, "I am listening and we are co-creating together" and "we're going to

[22] Respondent also asserts that its partners could not have reasonably understood Schultz' comments as inducements to refrain from union activity because they "were already aware of legal restrictions on Starbucks' right to unilaterally promise or give them any new improvements in their terms and conditions of employment." This claim, however, has no factual basis in the record and Respondent itself explicitly denies that such a statement was made to partners. See R. Br. at 39; GC Br. at 10, n. 11 (withdrawing paragraph 5(b) of the complaint).

fix the bigger issues of training, wages and the other…challenges that partners are having" amounted to a solicitation of grievances, with an implied promise to remedy them, available to employees as long as partners at their store did not engage in organizing activity. See *H.L. Meyer*, 177 NLRB 565, 573 (1969) (installation of suggestion box constituted unlawful solicitation where employer used employees' submitted "suggestions" as premise for making statements implying "that better wages, vacations and working conditions in general would follow once the union campaign was over, and the union had been defeated"), enfd. 426 F.2d 1090 (1970).

I therefore recommend that Respondent be found to have violated Section 8(a)(1) of the Act as alleged in paragraphs 5(a)(i) and (ii), and paragraph 6 of the complaint.

3. Schultz' May 3 earnings call announcement (Jt. Exh. 24) and Respondent's publicity regarding the targeted increases (Jt. Exhs. 29–31)

The General Counsel alleges that Schultz violated the Act during his May 3 earnings call by announcing that unionized and unionizing partners would not receive the increases and additionally by inviting partners to "compare" the wages and benefits being offered to union versus nonunion workers. Respondent's flurry of postings re-announcing the target increases are also alleged to violate the Act as independent 8(a)(1) violations.

As described above, Respondent's antiunion messaging was largely focused on promoting the idea that Schultz' nonunion collaboration (or co-creation) sessions were bearing fruit and partners should be on the alert for an important announcement on May 3 that would "incorporate their feedback." On May 2, partners were given a "heads up" that Schultz would have an update "coming out of our partner co-creation sessions" that week and were explicitly instructed to view a live-stream of Respondent's Q2 earnings call. Schultz did not disappoint.

Leading into his announcement, Schultz called attention to Respondent's reputation as an industry leader on providing wages and benefits, noting that it had achieved this status without "interference from any outside entity" and that this was "who we always will be." He then implored listeners to:

> compare any union contract in our sector to the constantly expanding list of wages and benefits we have provided our people for decades and the union contract will not even come close to what Starbucks offers.

He then announced that only partners at locations where there was no union representation and no union organizing "underway" would receive the new wage and benefit adjustments, because federal law prohibited Respondent from granting the same increases to partners "that have a union or where union organizing is underway."

(a) The wage/benefit increase announcement

"In a context of good-faith bargaining and absent other proof of unlawful motive," an employer will not violate the Act by declaring that benefits granted to its unorganized employees will be withheld from a group of employees being organized, on the ground that the benefits may be subject to further negotiations. *Chevron Oil Co.*, 182 NLRB 445, 449 (1970), enfd. in part 442 F.2d 1067 (5th Cir. 1971). By contrast, an announcement that amounts to a promise of benefits aimed to influence the outcome of an election or organizing campaign will be found to violate the Act. *Exchange Parts*, supra. In this regard, where an employer is found to have timed the announcement of increased benefits in order to dissuade union support, the announcement will be found unlawful. *Reno Hilton*, 319 NLRB 1154, 1154–1155 (1995); *Capitol EMI Music*, 311 NLRB 997, 1012 (1993), enfd. 23 F.3d 399 (4th Cir. 1994).

In addition, where an employer announces that union organizing is in fact the reason for its targeted withholding of benefits, this additionally interferes with employees' Section 7 rights. See, e.g., *Lamonts Apparel, Inc.*, 317 NLRB 286, 288 (1995) (statement to employees during negotiations that where would be no annual adjustment increase because employees were now represented by a union and their wages were subject to collective bargaining is a violation of Section 8(a)(1)); *Wellstream Corp.*, 313 NLRB 698, 707 (1994) (violation where superintendent told employee there "would be no raises as the Labor Board would not permit the Respondent to give raises during a union dispute"); *ACME Die Casting*, 309 NLRB 1085, 1125–1126 (1992) (statement to employees that their pay raise is stalled because the employer was contesting the union's election victory constitutes a violation of Section 8(a)(1) as it puts the onus of the delay on the union's very presence).

One variation on this "blame the union" tactic is known as the "carrot and stick" approach. In this ploy, an employer bypasses the Board's safe harbors for its conduct during an organizing campaign and instead promises a benefit solely for the purpose of withholding it from unionized or unionizing employees under the guise of avoiding the commission of an unfair labor practice.[23] This allows the employer to appear benevolent and yet force employees to choose between receiving the announced increase or supporting the union; from the employer's perspective, it has the added perk of blaming the union (and/or the labor law itself) for the employees' predicament. As the Board has recognized, such maneuvering acts:

> to discourage the future exercise of Section 7 rights by sending an unmistakable message to [organizing employees] that they [are] being punished for their support of the Union and to warn them and others—including those who received the benefit improvements—that they cannot engage in organizational activity

[23] The "carrot and stick" construct is credited to English philosopher Jeremy Bentham's 1789 explication of the incentive structure undergirding modern legal reforms. See H.L.A. Hart, *Bentham on Legal Powers*, 81 Yale L.J. 799, 805 (1972). Applied in the employment context, the theory posits that, like a donkey, an employee is best motivated by the pursuit of pleasure and the avoidance of pain and that therefore, the best way to make the donkey-employee productive is to put a "carrot" in front of him and jab him with a "stick" from behind.

> without jeopardizing their eligibility for benefits and risking detriment to their terms and conditions of employment.

Woodcrest Health Care, 366 NLRB No. 70, slip op. at 6. Not surprisingly, the Board has for decades recognized that, by deploying the "carrot and stick" approach, an employer flagrantly violates its workers' Section 7 rights. See *Goodyear Tire Co.*, 170 NLRB 539 (1968), enfd. as modified 413 F.2d 158 (6th Cir. 1969); see also *Staco, Inc.*, 244 NLRB 461 (1979); *Cadillac Overall Supply Co.*, 148 NLRB 1133, 1136 (1964); *Interstate Smelting & Ref. Co.*, 148 NLRB 219, 221 (1964).

Respondent is guilty of employing the "carrot and stick" tactic repeatedly, beginning with Schultz' May 3 earnings call announcement. After touting the success of the nonunion collaboration sessions, Schultz told listeners that partners at stores with union representation or union organizing would be denied the upcoming raise and benefits because federal law dictated as much. As discussed above, this misrepresented the situation in that the law actually afforded Respondent options to avoid liability without flatly denying increases to its unionized and unionizing partners. Rather than availing itself of these options, Respondent used Schultz' May 3 announcement to shift the blame for its discriminatory conduct to the union and to federal labor law. Then, Respondent layered this message through its multiple May 3 reannouncements by reminding partners that "federal law" deprived it of the "right" to grant the new increases to partners working at stores that had union representation and that it could not "lawfully" announce the benefits for stores were organizing was ongoing. Having been told that Respondent's hands were tied, it was reasonably foreseeable that partners would react to this carrot and stick approach by either abandoning or refraining from organizing activity.

As such, Schultz' May 3 announcement of the targeted increases, followed by Respondent's later "reannouncements" of the same, violated Section 8(a)(1) of the Act, as alleged in paragraphs 7 and 9 of the complaint.

(b) The exhortation that partners "compare" union and nonunion wages and benefits

The General Counsel alleges that Schultz' challenge during the May 3 earnings call that partners compare Starbucks' benefits to those provided by union contracts, in context, amounted to an unlawful promise of benefits, a coercive threat that partners pursuing unionization would be denied wage and benefits improvements and an unlawful statement of futility. I agree with respect to the first two theories of violation.[24]

At first blush and taken out of its context, Schultz' challenge would appear to merit the protection of Section 8(c) of the Act, which shields non-coercive employer speech opposing union organization. Indeed, the Board has long held that the Act permits an employer, absent promises or threats, to make comparisons between union and nonunion wages and benefits and make statements of historical fact. See, e.g., *Langdale Forest Products Co.*, 335 NLRB 602, 602

[24] While the complaint only pleads the futility theory, I find that the unpled violations are properly before me as they involve the same facts and the same inquiry as to whether the statement would reasonably tend to coerce listeners and were fully litigated under the Board's standard. See *Space Needle, LLC*, 362 NLRB 35, 38–39 (2015), enfd. 692 Fed. App'x. 462 (9th Cir. 2017).

(2001). In addition, an employer can state its opinion, based on such a comparison, that employees would be better off without a union. Id.

However, depending on their precise contents and context, such statements may nevertheless be rendered unlawful, because they convey implied promises of benefits, see, e.g., *G & K Services, Inc.*, 357 NLRB 1314 (2011); *Grede Plastics*, 219 NLRB 592, 593 (1975); *Westminster Community Hospital, Inc.*, 221 NLRB 185, 185 (1975), enfd. mem. 566 F.2d 1186 (9th Cir. 1977), or in effect condition improved wages and benefits on employees giving up union representation. See, e.g., *Bridgestone/Firestone, Inc.*, 332 NLRB 575, 576 (2000); *Selkirk Metalbestos*, 321 NLRB 44, 51 (1996).

In this case, had Schultz simply proclaimed Respondent's past and present wages and benefits superior to those resulting from collective bargaining, his remarks may well have been protected by Section 8(c). What he did, however, was to pit union-negotiated contract terms against Respondent's "constantly expanding list of wages and benefits," which he immediately proceeded to expand by announcing a pay and benefit increase for nonunion employees, along with an inaccurate claim that Respondent had been forced to withhold the wage increase from certain stores because of union organizing. These elements of his speech, I find, exceeded the permissible limits of Section 8(c) and amounted to an unlawful threat to withhold benefits and an implied promise of wages and benefits for refraining in union organizing. See *Alamo Rent-A-Car, Inc.*, 336 NLRB 1155, 1158 (2001) (manager's comment, with respect to employee benefits, that "with the union you don't know what you're getting, with [the employer] you know what you've got" evidenced implied promise of benefit tied to employees' refraining from support for union). I therefore recommend that Schultz' 'dare to compare' remarks be found to violate Section 8(a)(1) of the Act.

I do not agree with the General Counsel that Schultz' comment also amounted to an unlawful statement of futility. I recognize that the coercive effect of Schultz' statement was additionally enhanced by his contemporaneous allusion to the union as an outside, interfering entity that had never been, and would never be, responsible for Respondent's stance on pay. While an employer's statement that it will "never" agree to provide unionized employees with better wages or benefits than its nonunion workforce constitutes an unlawful statement of futility, see *Heartland of Lansing Nursing Home*, 307 NLRB 152, 158 (1992) (citing cases), I do not find that Schultz' more diffuse 'dig' at the union would have been interpreted by a reasonable employee as such.

Accordingly, I recommend that Respondent be found to have violated Section 8(a)(1) of the Act as alleged in paragraph 7(b), 8 and 9 of the complaint. I additionally find that, by the conduct alleged in paragraph 7(a) of the complaint, Respondent promised increased wages and benefits at its U.S. stores where employees had not sought union representation and threatened to withhold those increases at its U.S. stores where employees had sought, or were seeking, union representation, but that this conduct did not constitute an unlawful statement of futility.[25]

[25] The record contains a May 9 weekly update (Jt. Exh. 34) in which Respondent also announces the new pay and benefits. Although the announcement itself contains no reference to the new increases being withheld from union or unionizing partners, the General Counsel alleges that it constituted an unlawful promise of benefits in that Respondent used it to "redistribute[] to all partners" the exclusionary language

CONCLUSIONS OF LAW

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

2. Workers United Labor Union International (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

3. By promising employees that it would implement increased wages and benefits for employees working at its U.S. stores where employees were not represented and not seeking union representation, Respondent violated Section 8(a)(1) of the Act.

4. By soliciting employee complaints and grievances, thereby impliedly promising employees that it would implement increased wages and benefits for employees working at its U.S. stores where employees were not represented and not seeking union representation, Respondent violated Section 8(a)(1) of the Act.

5. By threatening employees that they would suffer a loss of wages and benefits if they support the Union or union organizing, Respondent violated Section 8(a)(1) of the Act.

6. By announcing and implementing increased or new wages and benefits to employees but excluding those employees working at stores where employees exercised their rights guaranteed under Section 7 of the Act by seeking union representation and/or participating in Board representation proceedings, Respondent violated Section 8(a)(3) and (1) of the Act.

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

REMEDY

Having found Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions, as further set forth in the Order below, designated to effectuate the policies of the Act.

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contained in one of its May 3 announcements (Jt. Exh. 31; GC Br. at 18). However, the only record evidence of this "redistribution" is the presence of a hyperlink in the update to an unspecified document entitled "Partner Investments FAQs." As more than one document in the record has been captioned similarly, I will not assume without evidence that the hyperlink in question led partners to the announcement in question. As such, I do not find this communication violative of Section 8(a)(1) as alleged and therefore recommend that complaint paragraph 10 be dismissed.

Respondent has a demonstrated proclivity for violating the Act and infringe upon the statutory rights of its employees in any number of means[26] during the course of their organizing efforts. See *Starbucks Corp.*, 372 NLRB No. 122 (2023); *Starbucks Corp.*, 372 NLRB No. 93 (2023); *Starbucks Coffee Co.*, 372 NLRB No. 50 (2023); *Starbucks Corp.*, 372 NLRB No. 122 (2023). See also *Starbucks Corp.*, 19–CA–293492, JD–27–23, 2023 WL 6194150 (Sep. 21, 2023); *Starbucks Corp.*, 14–CA–295813, JD–64–23, 2023 WL 6194147 (Sep. 21, 2023); *Starbucks Corp. LLC*, 19–CA–295014, JD–23–23, 2023 WL 5506933 (Aug. 25, 2023); *Starbucks Corp.*, 3–CA–296757, JD-55-23, 2023 WL 5506931 (Aug. 25, 2023); *Starbucks Corp.*, 9–CA–297286, JD–54–23, 2023 WL 5425324 (Aug. 22, 2023); *Starbucks Corp.*, 4–CA–294636, JD–50–23, 2023 WL 5140070 (Aug. 10, 2023); *Starbucks Corp.*, 20–CA–296184, JD–20–23, 2023 WL 5036077 (Aug. 8, 2023); *Starbucks Corp.*, 20–CA–298282, JD–18–23, 2023 WL 5125049 (Jul. 31, 2023); *Starbucks Corp.*, 2–CA–303077, JD–15–23, 2023 WL 4704791 (Jul. 24, 2023); *Starbucks Corp.*, 22–CA–305726, JD–14–23, 2023 WL 4546259 (Jul. 14, 2023); *Starbucks Corp.*, 3–CA–295470, JD–42–23, 2023 WL 4363911 (Jul. 6, 2023); *Starbucks Corp.*, 6–CA–294667, JD–40–23, 2023 WL 4294732 (Jun. 30, 2023); *Starbucks Corp.*, Case 25–CA–292501, JD–38–23, 2023 WL 4156243 (Jun. 23, 2023); *Starbucks Corp.*, 19–CA–295850, JD–14–23, 2023 WL 3738806 (May 31, 2023); *Starbucks Corp.*, 14–CA–300065, JD–35–23, 2023 WL 3735847 (May 30, 2023); *Starbucks Corp.*, 12–CA–291151, JD–31–23, 2023 WL 3504857 (May 17, 2023); *Starbucks Corp.*, 3–CA–304675, JD–33–23, 2023 WL 3478197 (May 12, 2023); *Starbucks Corp.*, 31–CA–299257, JD–13–23, 2023 WL 3478211 (May 12, 2023); *Starbucks Corp.*, 15–CA–290336, JD–30–23, 2023 WL 3254440 (May 4, 2023); *Starbucks Corp.*, 13–CA–296145, JD–28–23, 2023 WL 3222527 (May 2, 2023); *Starbucks Corp.*, 18–CA–299560, JD–23–23, 2023 WL 2832050 (Apr. 6, 2023); *Starbucks Corp.*, 18–CA–293653, JD–15–23, 2023 WL 2351350 (Mar. 3, 2023); *Starbucks Corp.*, 03–CA–285671, JD–17–23, 2023 WL 2327467 (Mar. 1, 2023); *Starbucks Corp.*, 07–CA–293742, JD–09–23, 2023 WL 1863272 (Feb. 9, 2023); *Starbucks Corp. LLC*, 27–CA–290551, JD(SF)–03–23, 2023 WL 1822163 (Feb. 6, 2023); *Starbucks*, 19–CA–290905, JD(SF)–02–23, 2023 WL 1389181 (Jan. 31, 2023); *Starbucks Corp.*, 14–CA–290968, JD–66–22, 2022 WL 7506363 (Oct. 12, 2022). Accordingly, I find that the cease-and-desist order in this case should 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 WL 2818503 (D.C. Cir. 2023).

Because Respondent violated Section 8(a)(3) and (1) of the Act by withholding from certain employees increased or new wages and benefits as outlined herein, I recommend that Respondent be ordered to extend to them those increased or new wages and benefits retroactively from the dates they were granted to Respondent's other employees. Respondent should further be ordered to make the affected employees whole for any losses suffered as a result of its unlawful conduct in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as outlined in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

[26] As the Board has recently reminded, a respondent is not required to repeat the same unlawful act to be considered a recidivist offender for the purposes of the fashioning an appropriate remedy. *The Daily Grill*, 372 NLRB No. 30, slip op. at 1, n. 7 (2022) (citing *ADT v. NLRB,* Nos. 22-1629 & 22-1483, 2022 U.S. App. LEXIS 33453 at *35–36 (7th Cir. 2022)).

In accordance with the Board's decision in *Thryv Inc.*, 372 NLRB No. 22 (2022), Respondent shall also compensate affected employees for any other direct or foreseeable pecuniary harms incurred as a result of the unfair labor practices found herein. 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 outlined in *Kentucky River Medical Center*, supra. To the extent Respondent's backpay obligations result in adverse tax consequences for affected employees due to their receiving lump-sum payments, Respondent is ordered to compensate those employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In accordance with the Board's decision in *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondent shall also be required to file with the Regional Director for Region 19 a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award.

Respondent's flagrant, corporate-wide attack on its employees' right to choose union representation convinces me that the following additional remedies are also appropriate:

In order to fully dissipate the effects of Respondent's widespread and egregious interference with employee rights and in view of its liberal use of its various online platforms to apprise partners nationwide of its discriminatory withholding of wage and benefit improvements from its unionized and unionizing partners, I will recommend that Respondent be ordered to post the standard Board notice, as well as the Board's Explanation of Rights poster, at each of its U.S. corporate-owned stores for one full year and additionally be ordered to electronically distribute, via its Partner Hub, these two documents electronically to all partners working in its U.S. corporate-owned stores. *J. Picini Flooring*, 356 NLRB 11, 11 (2010) (in ordering electronic notices, the Board notes that "electronic notices will have the same scope as notices posted by traditional means; that is, distribution will be limited to the extent practicable to the location(s) where the unfair labor practices occurred.").

I additionally find that Respondent's intentional and categorical discrimination against its unionized and unionizing employees is sufficiently serious such that a reading of the notice is warranted to dissipate the chilling effect of the violations on its partners' willingness to exercise their Section 7 rights. See *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 1 (2022). Because Respondent's former CEO was involved in the commission of several of the unfair labor practices, I will recommend that Respondent be ordered to include, along with its electronic posting of the notice and Explanation of Rights on the Partner Hub, a link to a video (in a form approved by the Regional Director of Region 19) of Respondent's Chief Executive Officer reading the notice and Explanation of Rights; this link is to be titled, "An Important Message from Starbucks' CEO Regarding Your Rights Under the National Labor Relations Act." 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). Respondent should be ordered to maintain these electronic postings and link on its Partner Hub for a period of one year.

I decline to recommend the grant of the General Counsel's additional requests for mandatory trainings for non-supervisory employees regarding their rights under the Act, an apology letter to Respondent's partners and union access to nonwork areas, during nonwork time, of Respondent's U.S. corporate-owned stores, as the remedies already ordered render such measures unnecessary. I further decline to recommend the grant of an extension of the 1-year certification year for all bargaining units for which a union has been certified. Such a remedy would, at a minimum, require a showing that Respondent's unfair labor practices undermined the bargaining process to the extent that the union was denied a meaningful opportunity to bargain. The record contains no reliable evidence on which to make such a finding.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[27]

ORDER

Respondent Starbucks Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Promising employees increased benefits and improved terms and conditions of employment if they refrain from union organizational activity.

(b) Soliciting employees' grievances or requests for improved terms and conditions of employment in order to discourage them supporting union organizational activity.

(c) Threatening employees that they will not receive increased or new wages and/or benefits if they elect union representation.

(d) Announcing increased wages and/or benefits for employees but excluding those employees at stores where there is union representation or union organizing, in order to discourage employees from support union organizational activity.

(e) Granting wage and/or benefit increases in order to discourage employees from engaging in union organizational activity.

(f) In any 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) Make current and former employees whole, with interest, for any losses resulting from their exclusion, based on their status as "unionized partners" or "unionizing

[27] 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.

partners," as defined by the parties' stipulations, from the increased or new wages and/or benefits announced on or about May 3, 2022, including the following:

(i) wage increase implemented on August 1, 2022;
(ii) Black Aprons and Coffee Master program benefits implemented on June 20, 2022;
(iii) Barista Craft Training program implemented on August 8, 2022;
(iv) dress code changes implemented on August 29, 2022;
(v) additional 15 minutes for Performance & Development Conversations ("PDCs") between partners and managers implemented on August 30, 2022;
(vi) free t-shirts to partners who completed the Barista Craft Training program implemented on September 16, 2022;
(vii) "My Starbucks Savings Program" and "Student Loan Management Tools" benefits implemented on September 19, 2022; and
(viii) Enhanced sick time accrual rate implemented on October 1, 2022.

(b) Make affected employees whole for any direct or foreseeable pecuniary harms suffered as a result of their exclusion from the increased or new wages and/or benefits listed in subsection (a);

(c) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(d) File with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form reflecting the backpay award.

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

(f) Within 14 days after service by the Region, post at each of its U.S. based company-owned stores copies of the attached notice marked "Appendix" and the Board's Explanation of Employee Rights poster.[28] Copies of the notice, on forms provided by the

[28] The Board's poster is located at employee-rights-under-the-nlra-poster-two-page-85-x-11-version-pdf-2022.pdf (nlrb.gov). If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while

Regional Director for Region 19, after being signed by the Respondent's authorized representative, and the Explanation of Rights shall be posted by the Respondent and maintained for one full year in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notice and Explanation of Rights are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed any facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice and Explanation of Rights to all current employees and former employees employed by the Respondent at such facility or facilities since April 11, 2022, in addition to sending them electronically.

(g) Record a video of Respondent's Chief Executive Officer reading the notice and Explanation of Rights and submit it for approval by the Regional Director of Region 19. Within 14 days after approval by Region, distribute this video via a posting on its Partner Hub accessible by partners working in its U.S. Corporate-owned stores, along with a copy of the notice and Explanation of Rights, via a link titled, "An Important Message from Starbucks' CEO Regarding Your Rights Under the National Labor Relations Act." These documents and link are to be posted and available for a period of one full year.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 19 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 with this order.

It is further ordered that the complaint allegations are dismissed insofar as they allege violations of the Act not specifically found.

Dated, Washington, D.C. September 28, 2023

Mara-Louise Anzalone
Administrative Law Judge

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."

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 a representative 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 promise you increased wages and benefits in order to undermine your support for Workers United or any other labor organization.

WE WILL NOT solicit grievances from you and make implied promises to remedy those grievances in order to undermine your support for Workers United or any other labor organization.

WE WILL NOT threaten to withhold increased or new wages and/or benefits from you if you elect union representation.

WE WILL NOT tell you that we are denying increased or new wages and/or benefits to partners at stores where there is union representation or union organizing in order to undermine your support for Workers United or any other labor organization.

WE WILL NOT implement increased or new wages and/or benefits to partners but exclude those partners who working at stores where there is union representation or union organizing in order to undermine your support for Workers United or any other labor organization.

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

WE WILL make employees to whom we discriminatorily denied the increased wages and benefits announced on May 3, 2022 whole, with interest, for any loss of earnings or other benefits suffered as a result of our discrimination against them.

WE WILL make affected employees whole for any direct or foreseeable pecuniary harms suffered as a result of their exclusion from the increased wages and benefits announced on May 3, 2022.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each 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

Henry M. Jackson Federal Building
915 2nd Avenue, Suite 2948, Seattle, WA
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m. (PST)

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-294579 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (206) 220-6300.