

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

STARBUCKS CORPORATION

and

Case Nos: 20-CA-298282

WORKERS UNITED

Matthew Peterson, Esq.,
for the General Counsel,
Michael G. Pedhirney and Elisa Nadeau, Esqs.,
for the Respondent
Ben Berger, Esq.,
for the Charging Party Union

DECISION

INTRODUCTION

GERALD M. ETCHINGHAM, ADMINISTRATIVE LAW JUDGE. This hearing was held on March 7, 2023, in San Francisco, California, over allegations that Starbucks Corporation (“Respondent”) violated Section 8(a)(1) of the National Labor Relations Act (“Act”) in response to a union organizing effort at its 4094 18th Street, San Francisco, California store (the Castro store) by Workers United (the Union). The General Counsel alleges that Store Manager Malisa Truong: (1) interrogated employees in the store manager’s office by repeatedly asking them why they felt they needed a union;; (2) later in the summer of 2022 Truong again interrogated Respondent’s employees about their union membership, activities, and sympathies; (3) applied Respondent’s Attendance and Punctuality Rule (Rule) selectively and disparately by enforcing the Rule only after Store employees engaged in Union activity and filed a representation petition; and (4) threatened employees with unspecified reprisals by requiring employees to acknowledge receipt of the Rule only after Store employees engaged in Union activity and filed a representation petition. Respondent denies that it violated the Act.

Based upon the record, the parties’ arguments, and the applicable law, I find Respondent committed all of the alleged violations.

STATEMENT OF THE CASE

On June 27, 2022¹, the Union filed the charge in the instant case. The Union later amended that charge on July 20 and a second time on September 29. On October 6, the General Counsel,

¹ All dates are in 2022 unless otherwise indicated.

through the Regional Director for Region 20, issued a Complaint and Notice of Hearing. On October 20, 2022, Respondent filed its Answer to the Complaint.²

5 On November 30, 2022, the Regional Director issued an Order Rescheduling the Hearing to March 7, 2023.

10 At the in-person hearing at Region 20's hearing room, all parties were afforded the right to call and examine witnesses, present any relevant documentary evidence, and argue their respective legal positions. The General Counsel, the Union, and Respondent filed post-hearing briefs, which I have carefully considered.

On the entire record, including my observation of the witnesses, I make the following

FINDINGS OF FACT³

15

I. Jurisdiction and Labor Organization Status

20 Respondent, a corporation with headquarters in Seattle, Washington, has been engaged in the retail operation of restaurants/stores throughout the United States, including the Castro store. In conducting its operations during the 12-month period ending September 30, 2022, Respondent derived gross revenues in excess of \$500,000. During the 12-month period ending September 30, 2022, Respondent, in conducting its operations, purchased and received at its Castro store in San Francisco, California facility goods and services valued in excess of \$5,000 directly from points outside the State of California. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It further admits,

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² Respondent raises various affirmative defenses, including alleged violations of its rights under the U.S. Constitution. The proponent of an affirmative defense has the burden of establishing it. At the hearing and in its post-hearing brief, Respondent failed to present evidence or argument regarding these defenses, except its arguments under the First Amendment and Section 8(c) of the Act. Accordingly, Respondent failed to meet its burden regarding those defenses.

³The Findings of Fact are a compilation of the stipulated facts, credible testimony, and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I primarily relied upon witness demeanor. I also considered the context of the testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), *enfd. sub nom.*, 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, *supra* at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), *rev'd. on other grounds* 340 U.S. 474 (1951)). Kreiss, Siri, and Trainer were observed to testify in a very straight-forward manner with what appeared to be excellent deference to the administrative hearing process and while each appeared nervous and soft-spoken at the start of their testimonies, they each relaxed as time went on and remained earnest and trustworthy with their recollection of facts from May-August 2022 even during cross-examination. Moreover, each of these three witnesses' testimony is particularly reliable given that each of them was testifying against their respective pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Flexsteel Industries*, 316 NLRB 745 (1995).

and I find, that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5 II Alleged Unfair Labor Practices

A. *Background*

10 Malisa Truong (Truong or Store Manager Truong) has been the proxy store manager⁴ at Respondent's Castro store starting in mid-April 2022 having taken over for Store Manager Roxie Mestas (Roxie) who left in April after the Castro store reopened in April 2022. (Tr. 25-26, 61, 96-97, 118, 130, 144.)⁵ Truong reported to district manager Niamh Ramirez (Ramirez) at all relevant times from April 2022 through October 2022. (Tr. 19, 27, 117-118.) Truong was also store manager of Respondent's Portola St. store also in San Francisco and split her time between these
15 2 stores from April to August 2022. (Tr. 61-62.)

The Castro store was closed for approximately four months from late December 2021 to mid-April 2022 for various necessary plumbing repairs when management and employees at the Castro store began preparations to re-open the Castro store soon thereafter. (Tr. 60-61, 96, 144.)
20

Ramirez was present at the Castro store a couple times a week. (Tr. 27.) Also, in 2022, District Manager Jaromy Schmidt (Schmidt) acted as temporary proxy district manager for Ramirez for a very short time in 2022. (Tr. 27.)

25 Under Truong, there are approximately 14-16 shift supervisors and baristas at the Castro store. (Tr. 25, 142.) All employees at the store are referred to as "partners."⁶ As its store manager, Truong is responsible for hiring, training, scheduling, staffing, conducting periodic performance reviews, and issuing discipline at the Castro store.

30 Both baristas and shift supervisors have some of the same duties at work that include customer service, preparing food and beverages, and cleaning and maintaining facilities. Shift supervisors also perform additional tasks such as running a shift and customer service, providing direction for the crew on duty, placing orders, directing employees to their needed shift duties, being responsible for money and handling cash registers with no authority to independently hire,
35 fire, or discipline employees. (Tr. 24, 95-96.)

Respondent's rules and regulations and Respondent's handbook or partner⁷ guide would be delivered to employees and signed-off by them when they are initially hired. (Tr. 27-28, 62, 120.)
40

⁴ A proxy store manager for Respondent is one who is already a store manager somewhere else who comes in on a temporary basis to act as a store manager in another nearby store. Tr. 25-26, 96-97.

⁵ Although I have included several citations to the record to highlight specific testimony or exhibits, my findings and conclusions are not limited to those portions and instead are based on my review and consideration of the entire record.

⁶ As stated above, the Partner Hub requires a store login code and is not accessible by the general public without either using the Store's iPads or the specific store login information, passwords or other codes. Tr 28.

⁷ Respondent calls its employees "partners" and each are interchangeable in this case. Tr. 28.

The partner guide or handbook is accessible both at the Castro store's computers and iPads and on the Partner Hub which is Respondent's website that employees access through a store's login information. (Tr. 28, 63, 97-98.)

5 Respondent's Partner Hub is also Respondent's non-public internal intranet website that Respondent uses to communicate with its employees. (Tr. 28.) In addition to weekly update and news at Respondent, the Partner Hub also is where Respondent shares its Partner Guide, its policies with employees and contains its policies and procedures handbook with all of its rules. (Tr. 62, 97-98.)

10 The Castro store's iPads are used to access the Partner Hub and provide any materials that employees need to reference. Respondent also gives its employees access to weekly updates on its Partner Hub that provides additional information such as what coffee to brew for the week and any updates regarding Respondent's policies such as changed dress codes. (Tr. 29, 98.)

15 James Forest Kreiss (Kreiss) started working at Respondent in 2018 in Turlock, California before he moved to the Castro store in December 2019. (Tr. 22-23.)

20 Siri Sirisvati (Siri) began working at the Castro store in November 2018 and returned as a barista at the Castro store in July 2020 after a 5-month absence. (Tr. 94-95.)

25 Kyle Trainer (Trainer) had worked for Respondent for nine years. (Tr. 140.) Trainer started at Respondent's 8th and Market Streets store before he transferred to the Castro store. Id. Trainer has worked both as a barista and as a shift supervisor at Respondent. (Tr. 140.) The last three years Trainer has worked as a barista.⁸ (Tr. 141.)

Siri has been a shift supervisor since May 2021 at the Castro store. (Tr. 95.)

30 Each day every employee is required to review the Partner Hub and leave their initials in a hard-copy physical daily records book that Respondent maintains for each store which documents an employee's attendance record at work and that they have reviewed the weekly updates. (Tr. 29, 98-99, 120.) Kreiss opines that this initialing indicates to Respondent that an employee has read the weekly update in the partner hub. Id. Kreiss also opines that employees do not use the Partner Hub to message other employees. (Tr. 63.)

35 In 2022, the Castro store operated from 6:30 a.m. to 6 p.m. Monday-Friday and from 6:30 a.m. – 4 p.m. on weekends. (Tr. 24.) All employees at the Castro store worked part-time in 2022. (Tr. 25.) In a given shift in 2022, 3-5 employees worked at the Castro store in 2022. Id.

40 In the back of the Castro store is a storage area/sink, a back-of-house cleaning area, and a combination breakroom and store manager office. (Tr. 23-27.) Kreiss opines that this backroom area is used most of the morning as the store manager's office when a store manager is in. When the store manager leaves, it is used as the employee breakroom. Id. Kreiss also opined that at the Castro store in 2022, store managers were only present Monday-Fridays in the mornings. (Tr. 27.)

⁸ Barista Trainer describes how shift supervisors get paid more than baristas but shift supervisors have more responsibility for customer service and handling money transactions that do not appeal to him. Tr. 142.

All store meetings with management and employees took place in the Castro store's backroom store manager's office/supply/breakroom. (Tr. 123.)

5 Sira describes the store manager office/supply/breakroom as being approximately nine feet by nine feet with ceiling that curves down due to its location underneath a set of stairs above. (Tr. 114.) Sira further explains that the room has all walls covered in shelves or a supply desk and the store manager's desk. Id. There are also some folding chairs and a little table for employees to sit at with folding chairs. Id.

10 Kreiss has worked as both a barista serving drinks, cleaning and re-supplying materials and also as a shift supervisor during his years at Respondent. (Tr. 24.) Kreiss became a shift supervisor at Respondent's Turlock store until he moved to the Castro store in December 2019. When he arrived at the Castro store in late 2019, he went back to the barista position and in August 2022, 15 Kreiss was promoted to shift supervisor again. (Tr. 22-24.)

20 By late 2021, employees at the Castro store were aware of various unionizing efforts at Respondent's stores nationally through social media and national news stories especially the unionizing occurring in Buffalo, New York and Respondent's resistance to unionizing. (Tr. 29-30, 99.)

25 Siri became more and more aware of the national unionizing campaign of the Union in January 2022, and as 2022 proceeded, news about the national unionizing at Respondent became more and more regular news. (Tr. 99.)

30 By May 2022, approximately 15-20 employees staffed the Castro store including store manager and occasionally the district manager.

35 Kreiss further opines that the Store Manager Truong typically performed her work in this back-of-the store office and occasionally Truong would venture out on the floor behind the bar and work to assist employees. (Tr. 26.)

40 Kreiss had discussions about the Union with other employees at the Castro store and with employees at other organizing stores and he had contact with Union representatives in 2022 prior to June 2022. (Tr. 30.)

45 Kreiss understood that the purpose of the Union was to bring the Union into the Castro store so employees could bargain for better rights and protections. (Tr. 30.)

40 B. In Late May/Early June 2022, Truong Approaches Kreiss Individually About Unionization

45 Before June 6, 2022, Store Manager Truong approached Kreiss about unionization. (Tr. 42-43, 67-68.) Kreiss recalled that Truong broached the unionization topic with Kreiss in her backroom office at the time and that other employees were going in and out of this area at the time. (Tr. 43.)

Truong specifically approached Kreiss and asked him for his opinion on unions. (Tr. 43.) Kreiss responded telling Truong that he was interested in learning more about unions. Id.

5 Next, Truong responds to Kreiss telling him that her husband was a member of a union in his workplace and that her husband had a positive view of his union but that she really did not know much about unions and Truong wanted to know what Kreiss knew about them. (Tr. 43, 70.)

10 Kreiss opines that this was Truong's attempt to see whether Kreiss was in support of a union in his workplace at the Castro store. (Tr. 43, 68, 73.)

Kreiss did not think that Truong said anything negative to him about the Union when she asked Kreiss his opinion of the Union. (Tr. 70.)

15 C. Employees at the Castro store File Petition of Election on June 6, 2022

The Union formally began to organize at the Castro store on June 6, 2022 when store employees filed a petition for union election. (Tr. 8-9, 145; GC Exh. 2.)

20 Kreiss, Siri, and Trainer were also aware that on June 6, 2022, the Union filed a petition for an election to represent employees at the Castro store. (Tr. 8-9, 30, 99, 145; GC Exh. 2.)

25 Kreiss started wearing Union pins after June 6, 2022 and openly supported the Union at this time while known to Truong. (Tr. 43.)

D. On June 9, Truong Approaches Siri Individually About Unionization

30 Sometime after June 6, 2022, Siri recalled Truong first approaching her individually to discuss unionization at the Castro store. (Tr. 102-103.) This meeting took place in Truong's back office and only Siri attended the meeting called by Truong. (Tr. 103.)

Truong began the meeting asking Siri how Siri felt about unionizing the Castro store. (Tr. 103.)

35 Siri responded saying to Truong that Siri did not feel strongly either way - for or against unionizing the Castro store. (Tr. 103.)

40 Next, Siri asked Truong why Truong might think that Siri would be against a union coming into the store "given that it's [unionizing] the only way we [employees] can negotiate our wages?" (Tr. 103.)

45 Truong responds by asking Siri whether it is "worth the time to unionize?" (Tr. 103.) Truong continued saying to Siri that Respondent had already announced that Castro store employees were scheduled to receive a pay raise in the Fall of 2022. Id.

Siri responded to Truong pointing out that Siri's "raise is projected to be \$0.69" [an hour] so to Siri unionizing actually "would be worth the time, yes." Id.

After that, Siri left the back storeroom and her conversation with Truong ended. (Tr. 103.)
 5 At no point during any of Siri's meetings with Truong when the Union was discussed did Truong tell Siri that she could not leave the meeting. (Tr. 126.)

This conversation between Siri and Truong occurred when Siri had arrived to start her shift, before she could clock in, Siri had walked to the back of the store to put her personal belongings away when Truong cornered Siri in Truong's office for her questions on unionization. (Tr. 103-104.)
 10

Siri opines that no store manager at the Castro store ever told her that no adverse action would be taken if she left any meeting with a store manager. (Tr. 123.)
 15

Siri explained that even though Truong did not say that her meeting with Siri was voluntary, Siri believed that she could not ignore Truong's unionization questions because Truong was Siri's store manager and Siri knew that she could not just ignore her store manager under any circumstances. (Tr. 104.)
 20

E. Unionization Efforts from Mid-June 2022 Through the August 16, 2022 Election

On June 10, Kreiss prepared and posted on one of the backroom employee bulletin boards at the Castro store the following update for employees to be alerted about the Castro store employees' progress on unionizing:
 25

Update on Union Progress (Big News!)
 6/10/2022

As of June 6 2022, we have officially filed to establish ourselves as a Union at store! Thank you everyone for taking the time to learn about the process, potential incoming benefits, and supporting each other through this beginning stage.
 30

What's the next step?

If you're available, myself and Benjamin Berger (senior associate at the firm assigned by Worker's United to represent our store) will be meeting via Zoom to discuss further details of the petitioning process on Thursday June 16th at 3:30 pm.
 35

The two main topics we plan to cover are:

(1) An overview of the election process and the possible (though unlikely) need to prepare for a pre-election hearing. Our official hearing date, if it is to take place, will occur no later than June 28.

(2) Whether partners at our store have experienced any misconduct that may be worth filing an unfair labor practice over.
 40

If you want to attend/have questions, please contact me before Thursday.

Your partner,

James K. [Kreiss]

(Tr. 31, 74; GC Exh. 4.)
 45

Kreiss explained that the purpose of his update to Castro store employees was to inform them of the unionizing progress. (Tr. 31.) Kreiss was one of the Union leader employees at Respondent organizing at the Castro store in early June 2022 and Truong knew this as its store manager. (Tr. 74-75.)

On June 9, 2022, Kreiss further explained that he was comfortable discussing posting his June 10 update alone with Store Manager Truong in her backroom office and he obtained her permission to post it before he posted it the next day. (Tr. 31-32, 73-74; GC Exh. 4.) Kreiss did not recall showing Truong the update document itself at this time. Id.

F. Truong Meets Alone with Kreiss and Siri to Deliver Respondent's Anti-Union Packet

On or about June 15, 2022, Kreiss and Siri recalled receiving Respondent's 14-page packet, GC Exh. 5, from Store Manager Truong each receiving the packet while alone in Truong's backroom office which Truong represented as containing Respondent's views on unionization. (Tr. 37-39, 41, 88, 100; GC Exh. 5.)

Truong told Kreiss that she provided all of the Castro store employees with this same 14-page packet from Respondent on or about June 15, 2022. (Tr. 38; GC Exh. 5.)

Sometime in mid-June 2022, Kreiss recalled that he did not feel comfortable rejecting the 14-page packet on receipt from Truong because it was just handed to him without conversation by Truong. (Tr. 88.)

This June 15 meeting was the first time that Kreiss met with Truong where Store Manager Truong indicated to Kreiss that the meeting to receive the 14-page packet was mandatory for Kreiss to attend. (Tr. 75.) Truong did not threaten Kreiss, however, if he did not read the packet of materials or if he refused to sit down and listen to Truong speak about the packet. Id.

Kreiss further opines that Respondent's 14-page packet on unionization was dissuading employees from voting for a Union and unionizing by showing how long a Union might take to get a signed collective bargaining agreement (CBA). (Tr. 39, 47; GC Exh. 5 at 5-7.) Kreiss also interprets the packet at pages 5-6 where Respondent specifically says about voting that Respondent believes that voting "no" is best for partners as meaning that Respondent suggests to all employees to vote "no" to unionization because Respondent is anti-Union and does not want a Union represented in all its stores. Id.

Siri described receiving the same 14-page packet from Truong in mid-June 2022 and that the packet expressed Respondent's opinion about unionization. (Tr. 100-101; GC Exh. 5.) Siri opined that some of the 14-page materials were received either at different times than in one packet as Kreiss described or more than once as Siri recalled receiving page 13 of the 14-page packet as part of Respondent's weekly update distribution in June 2022. (Tr. 101.)

Siri also recalled receiving the full 14-page packet from Truong at Truong's back store office and Truong did not say anything to Siri when she handed Siri the packet in mid-June 2022. (Tr. 101.) Siri thanked Truong for the packet. Id.

5 Siri did not recall attending any group captive audience meetings with Respondent's managers at the Castro store before the election. (Tr. 102.)

10 G. Trainer Is Also Given Respondent's Anti-Union Packet Before the August Union Election

15 Trainer also recalled seeing the same 14-page packet with Respondent's positions about unionization posted on the employee bulletin board in the back store manager's office/supply and breakroom. (Tr. 149.) Trainer also explained that if an employee would scan one of the bar codes in the packet, this would take the employee to the same 14-page packet that was posted in the employee breakroom at the Castro store in June 2022. (Tr. 149-150.)

Trainer recalls that Truong approached Trainer individually in mid-June to discuss unionization of the Castro St., store in her store manager's back office one-on-one. (Tr. 151-152.)

20 Truong asked Trainer whether she could ask him a question when he first arrived to work for his shift while she was seated at her office desk behind her computer. (Tr. 152.) Trainer was not wearing any Union insignia at this time of the meeting. (Tr. 153.)

25 Without any prior notice from Truong that they were going to discuss unionization and Trainer's opinions about the Union ahead of the meeting, Truong next asks Trainer whether he was pro-Union or not. (Tr. 152-154.)

Truong further asks Trainer "how do you feel about the Union?" (Tr. 152-153.)

30 Trainer responded hesitantly because he knew that Respondent was against unionization but Trainer eventually said that yes, he was pro-Union and in favor of the Union coming in at the Castro store. (Tr. 152-153, 156.)

35 Trainer further explained that it was a "little nerve-racking" having Store Manager Truong put him on the spot like this when he first arrived to work given his awareness that Respondent was anti-Union at the time. (Tr. 152-153, 156.)

40 Trainer recalls that Truong next tells Trainer that "a unionization effort can take years to get a [CBA] contract. (Tr. 153, 158-159.)

Trainer opined that he did not think he could ignore Store Manager Truong's question to him about unionization because it was early in the day, he was nervous, and Respondent had made it clear that they are against having a union at their stores. (Tr. 154.)

45 In addition, in early July 2022, Trainer also recalls that he was handed the same 14-page packet, GC Exh. 5, by district manager Jeromy Schmidt in a manila envelope. (Tr. 150-151.)

Trainer opined that Respondent's 14-page packet, GC Exh. 5, contained information which conveyed to Respondent's employees and Trainer that Respondent was anti-Union and wanted all its employees to vote "no" or against the Union coming into the Castro Street store. (Tr. 151; GC Exh. 5 at 6-7.)

H. Respondent's Changed Attendance and Punctuality Policy After June 6, 2022

Siri described the attendance and punctuality policy at the Castro store before Truong revised it in June 2022 as being a shift supervisor to answer calls when an employee calls in late or sick and the store manager is not in the store, calling employees who are late to show and document if they were five or more minutes late for their shift or not coming in at all. (Tr. 108.) Siri also referred to this "reaching out" to supervisor or calling the shift supervisor if an employee was running late as the Attendance and Punctuality policy at the Castro store since November 2018 through June 2022. (Tr. 128-129.)

Siri opined that an employee oversleeping once a year is "within reason" and should not be a disciplined incident. (Tr. 132.) Siri also opined that before June 6, 2022, shift supervisors would write down a "no-call, no-show" or "arrived late" employee and the store manager later decides whether discipline is warranted. Also, before June 6, 2022, Siri would regularly call a late-arriving employee before she would call someone who is not scheduled to work that shift. (Tr. 133-136.) In the latter instance, Siri would not mark an employee as a "no-call, no-show" if she reached them when she called to see where they were and they came into work. (Tr. 136.)

Also, in 2022, Siri would write-up someone who showed up five minutes or more late for a shift without calling and leave it to Truong to decide whether to discipline or not.

Sometime soon after June 6, 2022, Store Manager Truong had Kreiss sign-off on Respondent's one-page Attendance and Punctuality rule from its handbook even though Kreiss would have signed-off on receiving Respondent's full handbook of rules, policies and procedures when he was first hired by Respondent in 2018.⁹ (Tr. 47, 81; GC Exh. 6; R Exh. 2.)

Kreiss explained that this Attendance and Punctuality policy handout was presented to him by Truong in her backroom office at the Castro store as a handout which Truong required Kreiss sign before the Union election on August 16, 2022. Kreiss thinks that his co-worker Siri might have been present for part of this meeting with Truong. (Tr. 47-48, 81; GC Exh. 6; R Exh. 2.)

Truong explained to Kreiss that she was handing him the Respondent's Attendance and Punctuality policy and requiring him to sign it again and return to her because as store manager she wanted to hold store employees like Kreiss more accountable and more strictly enforce this punctuality policy against store employees going forward after June 6. (Tr. 48; GC Exh. 6.)

⁹ Before June 2022, Kreiss has received a final written warning discipline from his prior store manager Roxie on October 9, 2021 for attendance and punctuality issues for failing to call or show up for his shift on October 7, 2021, in violation of Partner Guide page 27 saying a partner must call the store manager if they cannot report to work. Tr. 77-79; R Exh. 1.

Kreiss opined that he did not feel comfortable immediately signing the one-page Attendance and Punctuality policy in Truong's presence because this felt like a way to hold employees accountable and dissuade them from voting for the Union. (Tr. 48-49; GC Exh. 6.)

5 Next, Kreiss asked Truong if he could wait to sign-off on the policy until after he had a chance to discuss it with a Union representative. (Tr. 49; GC Exh. 6.)

10 Truong responded telling Kreiss that as of June 6, 2022, she would be strictly enforcing and writing up and disciplining employees who were late to work as described in Respondent's Attendance and Punctuality policy, GC Exh. 6, which was contrary to Truong's behavior and different conduct by Store Manager Truong from how she enforced the same policy before June 6, 2022. (Tr. 49; GC Exh. 6.) Kreiss acknowledged how some employees would arrive late to work around this time due to unreliable Lyft or Uber rideshare drivers and through no fault of Respondent's employees.¹⁰ (Tr. 50-51.)

15 Beginning after June 6, 2022, Castro store employees would be considered late and subject to discipline by Truong anytime they were late arriving for their scheduled start time. (Tr. 49.) Kreiss opined that he worked out an agreement with Truong that if he called into the store ahead of being late or not showing up, Truong would not write him up for a violation of Respondent's Attendance and Punctuality policy although Truong would write up other employees going forward if they were late or a no show even if they called in ahead of their shifts. (Tr. 54, 86.)

20 Kreiss described how Truong enforced the same Attendance and Punctuality policy differently before June 6, 2022 as typically if an employee was running late, a shift supervisor might text or call the employee who was running late to just see if they were on their way to work their shift, if they were ok, and just check on them. (Tr. 49.) Kreiss opined that usually before June 6, 2022, there would not be a discipline write-up in the case of an employee arriving later to a shift. (Tr. 49-50.)

30 Kreiss further described a potential punctuality incident (the potentially late incident) that occurred in mid-June 2022 and Truong improperly referenced it in early June 2022 which occurred when Kreiss had a potentially late arrival to work and before Kreiss arrived late to work he received a telephone call from his shift supervisor at Respondent who told Kreiss not to come into work that day because the Castro store was closing for the day so although Kreiss would potentially have been late to arrive to work that day, he was not actually late and did not receive any discipline from Respondent because there was no need for Kreiss to show up to work that day due to the store closure.¹¹ (Tr. at 50-51.)

¹⁰ In 2022, Respondent provided a benefit to its employees where Respondent would pay up to \$20 per ride and up to 20 rideshares/month to transport employees to and from their work location. - a program in place since 2018 according to Kreiss. Tr. 50-52.

¹¹ Siri broadly testified about a similar potentially late incident involving Kreiss that came up when she interrupted a meeting between Truong and Kreiss in mid-July 2022 but it appeared to me at hearing that Siri did have the same detailed recollection of the true facts of the potentially late incident as Kreiss so I adopt Kreiss' version of the events in June 2022 over Siri's version as more believable when Kreiss missed a call from a shift supervisor when Kreiss was running a little late to his shift and when Kreiss returned the message left by the shift supervisor and spoke to him the shift supervisor told Kreiss not to come in because the store was closing early for the day. Tr. 50-51, 130-131.

According to Truong, however, Kreiss would have been considered late for work that day despite the store closure and this is why Truong explained she raised the Attendance and Punctuality policy and was requiring Kreiss to sign-off on it again. (Tr. 51.) Basically, beginning on June 6, Truong was getting rid of the practice of shift supervisors calling scheduled employees to check and see if they were coming into work or not.

Kreiss further opined that this expressed change in enforcement of Respondent's Attendance and Punctuality policy after June 6, 2022, as explained by Truong, and concerned Kreiss with how the policy might be implemented by Truong moving forward particularly after Truong required Kreiss to sign-off on it on July 14, 2022. (Tr. 50, 55; GC Exh. 6.)

Truong next told Kreiss that she was providing him with the policy to sign and that she intended to enforce the Attendance and Punctuality policy more strictly going forward "specifically because of an instance that happened a month prior where she considered [Kreiss] [showing up to work] late" – the potentially late incident referenced above. (Tr. 50-51.)

Kreiss also recounted a conversation he had with Truong on July 14, 2022, about Kreiss asking Truong about getting promoted to the shift supervisor position as he had worked in Turlock, California, before transferring to San Francisco and the Castro store and returning to the barista position in December 2019. (Tr. 58, 83-84.)

In response, Truong brought up the potentially late incident again and Truong told Kreiss that because she was unsure about Kreiss' attendance and punctuality record at Respondent, and Truong told him that because of the potentially late incident which occurred in early June, she would classify that as a no show, no call under the new post-June 6 Attendance and Punctuality policy and not promote Kreiss to shift supervisor at this time. (Tr. 56-58.) Kreiss opined that he was probably wearing Union insignia during this July 14, 2022 conversation with Truong. (Tr. 58.)

Before July 15, 2022, Siri recalled having a conversation with Truong about Respondent's attendance and punctuality policy. (Tr. 109.) Siri recalled that Truong was in a meeting in her back store office with Kreiss when Siri joined the meeting. (Tr. 109-110.) Siri recalled Truong telling Kreiss that Kreiss was not going to be promoted to shift supervisor at that time because there were things that Truong wanted Kreiss to work on. (Tr. 110.)

Siri also overheard Truong tell Kreiss that the delayed promotion was due to the potentially late incident referenced above classified by Truong as a no call, no show incident that had occurred approximately a week or so earlier. (Tr. 50-51, 110.)

Siri explained that at this point in the meeting, Siri "butted into the conversation" and disagreed with Truong's description of the potentially late incident involving Kreiss a week or so earlier as Siri did not think the potentially late incident was an actual "no call, no show" situation. (Tr. 110.) Siri described this incident involving Kreiss as she understood it to be that Kreiss was running late for a shift and had not called in yet but that his shift supervisor had reached out to Kreiss shortly after Kreiss' shift started and informed Kreiss that the store was closing that day

and he did not need to come into work. Id. Siri opines that this incident as she describes is historically not regarded as a “no call, no show” as Siri explains Truong as treating the Kreiss’ incident. Tr. 50-51, 110.)

5 Siri next informs Truong that Truong’s interpretation of the Kreiss potentially late incident as a “no call, no show” matter is inconsistent with how Siri and other shift supervisors report discipline as there would be many Castro store employees subject to discipline under Truong’s revise Attendance and Punctuality rule. (Tr. 111.)

10 Siri next observed that no other employee but Kreiss, were being treated the same way in the past with Kreiss not being promoted due to Truong’s treatment of Kreiss’ potentially late incident and Siri did not understand why Truong was changing the Respondent attendance and punctuality policy which so far only negatively affected Kreiss by his lost promotion opportunity. (Tr. 111.)

15 Siri left the July 14 or 15 meeting with Truong and Kreiss with an understanding that going forward, Truong’s changed Attendance and Punctuality policy involved Siri and all shift supervisors not reaching out if an employee was running late for a shift and, instead, waiting to see whether or not they call in to a shift supervisor to let them know they are running late, and if
20 the shift supervisor is not contacted by the late-running employee, it is considered a “no call, no show” and subject to discipline. (Tr. 111-113.)

Siri agreed that the policy she and other shift managers followed prior to this changed policy by Truong on June 6, 2022 was not contained in Respondent’s one-page Attendance and
25 Punctuality policy – GC Exh. 6. (Tr. 127.) Moreover, Siri further explains that if an employee reached out to a shift supervisor and said they were running a little late prior to their shift start before June 6, 2022, the partner employee was not in violation of Respondent’s Attendance and Punctuality policy. (Tr. 127.)

30 Respondent never issued any discipline to Kreiss for the potentially late incident in June 2022 but Truong delayed Kreiss’ promotion to shift supervisor because of this incident.

35 On July 15, 2022, the next day after being asked to sign-off on the Respondent’s Attendance and Punctuality policy, Kreiss further spoke with Truong about her new enforcement policy and Truong told Kreiss that she was concerned with how employees were showing up late in the morning. (Tr. 50.)

40 Also, on July 15, 2022, Truong handed Siri the same attendance and punctuality page she had Kreiss sign-off on and asked Siri to sign-off on the Respondent’s Attendance and Punctuality policy and return the signed page to Truong before the Union election in mid-August 2022. (Tr. 106-108, 115-116; GC Exh. 6.) Siri did not recall any other store manager other than Truong in summer 2022 before the Union election asking her to sign-off on some specific Respondent rule or policy. (Tr. 116.)

Siri and Trainer did not wear any Union insignia before the August 16 election results were known and Siri opined that she has never worn Union insignia at the Castro store. (Tr. 100, 104, 147-149.)

5 I. On July 14, Truong Again Asks Kreiss and Siri About Unionization.

Also, on July 14, 2022, Store Manager Truong approached Kreiss again about his opinion on unionization of the Castro store. (Tr. 44-46.) This repeated question from Truong about unionization took place in the front of the store behind the bar where Kreiss and Siri were working and lasted about 20 minutes, (Tr. 44, 76, 130.) Siri was also present and joined in the conversation between Truong and Kreiss. (Tr. 44, 104-105.)

Kreiss was still wearing his Union insignia on July 14 and was openly supporting the Union. (Tr. 77.)

Also, on July 14, 2022, Store Manager Truong asked Kreiss who he thought would be on the bargaining committee team for the Union if the Union won the upcoming August 16 election. (Tr. 46, 75, 85.) Kreiss responded to Truong telling her that he did not feel comfortable sharing information about who would be on the bargaining committee for the Union. Id.

Kreiss understood Truong's question to be asking him who of the Castro store employees he thought would be on the Union's bargaining committee to negotiate a CBA with Respondent's committee members. (Tr. 86.)

Kreiss further responded to Truong that he was not sure who would be on the bargaining committee but he hoped that it would be as many employees as possible, including himself. (Tr. 46.)

Next, Kreiss referred Truong to the Workers United Union website if she wanted to learn more information. Id. Truong responds to Kreiss telling him that she did not think it was legal for her to take a look at the Union's website information as Respondent's store manager. (Tr. 46-47.)

Siri recalled Truong asking both Kreiss and Siri at this time on July 14: "Isn't unionizing a waste of time?" (Tr. 105.)

Siri next recalled Store Manager Truong asking Siri why Siri cared about unionizing because it would take so long implying to Siri that it was a long process to achieve a first CBA contract between the Union and Respondent and further asking Siri why Siri would personally care to join the Union because Siri had told Truong that she could not stay working at the Castro store long-term and that Siri was not planning on working at Respondent as a career because Siri was not earning enough money to survive on working at the Castro store.¹² (Tr. 105-106.)

Next, Siri responds to Truong saying "well, if we [employees] could negotiate our wages and we could get a higher salary, I [Siri] would love to stay at this job. I like the job." (Tr. 106.)

¹² Siri explained that she had had this "I'm not a long-term Respondent employee" conversation with Truong prior to this July 14 conversation. Tr. 106.

5 Kreiss also recalled that Truong also mentioned to him that bargaining negotiations between the Respondent and the Union could take a long time to reach a first CBA which was consistent to Kreiss for how Respondent was presenting their position that a first CBA would take a long time to negotiate and get signed and Truong referred Kreiss to a CBA that took more than a year to reach in Canada between Respondent and a union in Canada. (Tr. 47, 76.)

10 Next, Truong asked Kreiss about the possibility that after bargaining and reaching a CBA Kreiss might have to live with terms in the contract that don't look so appealing such as some of the terms negotiated in the CBA in Canada. (Tr. 76.)

Later on, July 14, Truong asked Kreiss about how things would get resolved at the Castro store if the store were to be unionized. (Tr. 76-77.)

15 On July 14, during this approximate 20-minute conversation at the front bar station, Kreiss did not feel comfortable walking away from Truong and her questions because he was stationed behind the front bar and he was working his shift. (Tr. 89.)

20 The voting period was from July 25 to August 16, 2022. (Tr. 146-147.)

Castro store employees mailed-in their ballots by 2 p.m. on August 16, 2022 when the vote count occurred. (Tr. 33; GC Exh. 3.)

25 On August 16, 2022, Castro store employees learned the positive results of the vote count as the Union won the election to unionize the Castro store. (Tr. 33, 46, 99-100.)

On July 25, 2022, mail ballots were sent to store employees for voting purposes on July 25, 2022. (Tr. 9.)

30 Leading up to the August 16, 2022 election, Kreiss was comfortable openly displaying his support for the Union at work by speaking to other employees about supporting the Union as well as wearing a Union pin. (Tr. 33-34, 74.) While comfortable wearing the Union insignia, Kreiss feared retaliation by Respondent against his wearing the Union insignia and being an employee who openly supported the Union due to other instances at other Respondent's stores where Respondent retaliated against Union supporters. (Tr. 85.)

35 Kreiss also identified a Union t-shirt that he was comfortable wearing after June 6, 2022 at the Castro store before August 16, 2022. (Tr. 35, 74.) Kreiss opines that after he first started wearing Union pins and t-shirts at the Castro store, he noticed other employees wearing pins. (Tr. 37.) Kreiss was never admonished by Respondent for wearing Union insignia at the Castro store. (Tr. 74.)

45 On August 16, 2022 ballots were counted and the Union won the election making the Castro store one of the first Respondent stores unionized in the Bay Area (Tr. 9, 33; GC Exh. 3.)

After the Union won the election in mid-August 2022, Trainer started wearing Union insignia particularly Union pins. (Tr. 147-149; GC Exh. 8.) Kreiss also identified a co-worker, Trainer, who also wore a Union pin on his apron at the Castro store on or after August 16, 2022. (Tr. 35-37.)

In August 2022, Store Manager Truong left the Castro store and was replaced by new Store Manager Lili Frazier (Frazier). (Tr 26.)

After Kreiss' July 14 conversation with Truong where Kreiss asked to be promoted to shift supervisor and Truong refused Kreiss' request for a promotion to shift supervisor due to some disputed doubt that Truong had about Kreiss' attendance and punctuality and the potentially late incident, Kreiss was promoted to shift supervisor in August 2022 after the August 16 vote count by new store manager Frazier after Kreiss was interviewed by Frazier and after Truong left the Castro store as its store manager. (Tr. 83-84, 90.)

ANALYSIS

A. Interrogation Allegations

1. *General Legal Analysis*

The General Counsel alleges that in May through July, Respondent, through Store Manager Malisa Truong, unlawfully interrogated employees at the Castro store and made statements and engaged in conduct in response to the Union organizing effort that violated Section 8(a)(1) of the Act.

The statements and conduct were mostly evidenced by witness testimony, and documented by Union or Respondent publications or in either Respondent's disciplinary issuances, its policy and procedures manual and the representation petition itself dated June 6, 2022.¹³ (GC Exhs. 2-8; R Exh. 1-2.)

Section 8(a)(1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Section 7 of the Act provides that, "employees shall have 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 for the purpose of collective bargaining or other mutual aid or protection." The

¹³ Here, Respondent did not call Truong as a witness as it chose to rest its case immediately after the General Counsel finished their case in chief. Tr. 161. Truong, who was not shown to be unavailable, was not called to dispute any of the testimony by witnesses for the General Counsel. Respondent's failure to call as a witness and question Truong about the alleged interrogations, threats, and disparate enforcement of the Attendance and Punctuality Rule supports an inference that the General Counsel's witness' testimony is undisputed. See *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting an administrative law judge may draw an adverse inference from a party's failure to call or question a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). As a result, I conclude the testimonies of Kreiss, Siri, and Trainer are for the most part consistent, undisputed, and true as to the factual events that took place from May to July 2022 at the Castro store with respect to their interactions with Castro store manager Truong.

Board employs a totality of circumstances standard to distinguish between employer statements that violate Section 8(a)(1) by explicitly or implicitly threatening employees with loss of benefits or other negative consequences because of their union activities and speech that is protected by Section 8(c) of the Act. *Multi-Ad Services*, 331 NLRB 1226, 1227-1228 (2000), *enfd.* 255 F.3d 363 (7th Cir. 2001). In considering whether communications from an employer to its employees violate the Act, the Board applies the objective standard of whether the remark reasonably tends to interfere with the free exercise of employee rights. The Board does not consider either the motivation behind the remark or its actual effect. *Scripps Memorial Hospital Encinitas*, 347 NLRB 52, 52 (2006); *American Tissue Corp.*, 336 NLRB 435, 441 (2001).

Respondent denies the allegations and further argues as an affirmative defense that any meeting it held with partners and any statements made by any of its supervisors and/or agents fall within the ambit of Section 8(c) of the Act and the First Amendment to the United States Constitution, and as such, neither constitutes nor can be used as evidence of an unfair labor practice. Section 8(c) states "[t]he expressing of any views, argument, or opinion . . . shall not constitute or be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or force or promise of benefit." In *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969), the Supreme Court held that an employer may lawfully communicate to his employees "carefully phrased" predictions based on "objective fact[s]" as to "demonstrably probable consequences beyond his control" that he believes unionization will have on his company. However, the Court cautioned that if there is "any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him," the statement is a threat of retaliation, which violates Section 8(a)(1). *Id.* The Court further emphasized that in determining whether a statement is a lawful prediction or an unlawful threat, the Board "must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear." *Id.* at 617.

2. *Late May/Early June Alleged Interrogation of Kreiss*

The General Counsel's complaint at paragraph 7(a) alleges that in late May/early June before the Union's petition for election was filed on June 6, Respondent, by Store Manager Truong, at the Castro store, interrogated its employees about their union membership, activities, and sympathies. Specifically, I find that before June 6, Store Manager Truong approached Kreiss about unionization in her backroom office and that other employees were going in and out of this area at the time. Truong specifically approached Kreiss and asked him for his opinion on unions and Kreiss responded telling Truong that he was interested in learning more about unions. Next, Truong responds to Kreiss telling him that her husband was a member of a union in his workplace and that her husband had a positive view of his union but that she really did not know much about unions and Truong wanted to know what Kreiss knew about them. Kreiss opines that this was Truong's attempt to see whether Kreiss was in support of a union in his workplace at the Castro store. Kreiss did not think that Truong said anything negative to him about the Union when she asked Kreiss his opinion of the Union.

The General Counsel alleges that in May, 2022, Truong violated Section 8(a)(1) when she interrogated Kreiss about his and other employees' union activity. In determining whether the

questioning of an employee about union or other protected activity constitutes unlawful interrogation, the Board applies a totality-of-the-circumstances test. *Rossmore House*, 269 NLRB 1176, 1177 (1984), *affd. sub nom. HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). This test considers various factors, including: the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; the nature of the information sought; the identity of the interrogator, i.e., his or her placement in the employer's hierarchy; whether the interrogated employee was an open or active union supporter at the time of the questioning; whether proper assurances were given concerning the questioning; the place and method of the interrogation; and the truthfulness of the interrogated employee's reply. *Id.* See also *Westwood Health Care Center*, 330 NLRB 935, 939 (2000).

I do not find that Respondent unlawfully interrogated Kreiss in late May/early June before June 6. While the above conversation was initiated by Truong, it was the broadest of conversations about unionization and this was before a petition for election was filed by the Union on June 6. Since this was before the petition for election was filed, it is not surprising that Truong may have been legitimately interested whether there was a union campaign in its early stages at the Castro store and Truong admitted being somewhat new to unionization and innocently asked Kreiss his opinion about unions while sharing apparently everything Truong knew at that time which was mostly a positive opinion about unions she had received from her husband's union involvement. Truong did not seek any additional information about the organizing campaign or union activities and Kreiss remained free to leave the conversation at any time. Under these circumstances, I do not find that Truong's questions to Kreiss had a reasonable tendency to restrain, coerce, or interfere with employees' Section 7 rights, and I therefore recommend that the complaint allegation regarding the late May/early June before June 6 meeting be dismissed.

3. *Respondent's June 9 Interrogation of Siri.*

The General Counsel's complaint at paragraph 7(b) alleges that about June 9, Respondent, by Store Manager Truong, at the Castro store, interrogated its employees about their union membership, activities, and sympathies. Specifically, I find that the Castro store employees' petition for Union election was filed on June 6 and this made it apparent to everyone, including Store Manager Truong, at the Castro store that unionization had begun and that only Kreiss was openly supporting the Union as of at least June 6 when Kreiss started wearing Union pins.

Sometime after June 6, 2022, Truong first approached Siri individually to discuss unionization at the Castro store and this meeting took place in Truong's back office and only Siri attended the meeting called by Truong. This conversation between Siri and Truong occurred when Siri had arrived to start her shift, before she could clock in, Siri had walked to the back of the store to put her personal belongings away when Truong cornered Siri in Truong's office for her questions on unionization. Siri opines that no store manager at the Castro store ever told her that no adverse action would be taken if she left any meeting with a store manager. Siri explained that even though Truong did not say that her meeting with Siri was voluntary, Siri believed that she could not ignore Truong's unionization questions because Truong was Siri's store manager and Siri knew that she could not just ignore her store manager under any circumstances.

Truong began the meeting asking Siri how Siri felt about unionizing the Castro store. Siri responded saying to Truong that Siri did not feel strongly either way - for or against unionizing the Castro store. Next, Siri asked Truong why Truong might think that Siri would be against a union coming into the store “given that it’s [unionizing] the only way we [employees] can negotiate our wages?” (Tr. 103.) Truong responds by asking Siri whether it is “worth the time to unionize?” (Tr. 103.) Truong continued reminding Siri that Respondent had already announced that Castro store employees were scheduled to receive a pay raise in the Fall of 2022.

Siri responded to Truong pointing out that Siri’s “raise is projected to be \$0.69” [an hour] so to Siri unionizing actually “would be worth the time, yes.” Id. After that, Siri left the back store room and her conversation with Truong ended. (Tr. 103.)

The General Counsel alleges that at this June 9 meeting, Truong violated Section 8(a)(1) when she interrogated Siri about her being for or against unionization and Truong trying to talk Siri out of voting for the Union because of Respondent’s promised benefit of a \$0.69 pay raise, Siri could expect in the Fall. In determining whether the questioning of an employee about union or other protected activity constitutes unlawful interrogation, the Board applies a totality-of-the-circumstances test. *Rossmore House*, 269 NLRB 1176, 1177 (1984), *affd. sub nom. HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). This test considers various factors, including: the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; the nature of the information sought; the identity of the interrogator, i.e., his or her placement in the employer’s hierarchy; whether the interrogated employee was an open or active union supporter at the time of the questioning; whether proper assurances were given concerning the questioning; the place and method of the interrogation; and the truthfulness of the interrogated employee’s reply. Id. See also *Westwood Health Care Center*, 330 NLRB 935, 939 (2000).

Under the totality of the circumstances, I find Truong’s statements to Siri on June 9 constitute unlawful interrogation. Truong is the highest-ranking official at the Castro store, and she initiated the exchange to gather information about employees’ union activities, even though she already knew employees at the Castro store had filed a petition for Union election on June 6. In addition, Respondent here has an extensive history of hostility toward or discrimination against union activity. See *Starbucks Coffee Co.*, 372 NLRB No. 50 (2023), and the various administrative law judge decisions finding unlawful anti-union conduct by Respondent in footnote 15 herein. In addition, Truong failed to convey any other legitimate purpose for her inquiries; nor did she provide Siri with any assurances against reprisals. See *RHCG Safety Corp.*, *supra* slip op. at 1-2; *Multi-Ad Services, Inc.*, *supra* at 1227-1228. Although Truong and Siri would occasionally work together and chat, they had never discussed, and Siri never volunteered, her views or plans about organizing. As such, she was not an open Union supporter even after the election in August 2022. But when Truong directly asked her whether she was for or against the Union, she answered her supervisor truthfully. Truong then probed further. She next tries to coerce Siri against unionizing by reminding her that Respondent had already promised a pay raise in the Fall. The Board has held these types of questions further support finding unlawful interrogation. See *Hall of Mississippi, Inc.*, 249 NLRB 775, 781 (1980) (questioning employees what they hoped to gain by supporting union, without any other legitimate purpose, constituted unlawful interrogation). See also *Mid-States Distrib. Co.*, 276 NLRB 1511, 1554 (1985) (supervisor asking what benefits employee hoped to derive from unionizing was coercive interrogation particularly when

accompanied by threat). Siri again responded truthfully, explaining her reasons for wanting to organize.

Accordingly, in considering the totality of the circumstances, I conclude Truong's June 9 statements and questioning of Siri amounted to unlawful interrogation, in violation of Section 8(a)(1) of the Act.

4. *The June 15 Alleged Interrogation of Trainer*

The General Counsel's complaint at paragraph 7(c) alleges that about June 15, Respondent, by Store Manager Truong, at the Castro store, interrogated its employees about their union membership, activities, and sympathies. Specifically, I find on June 15, Kreiss and Trainer received Respondent's 14-page anti-Union packet from Store Manager Truong, each receiving the packet while alone in Truong's back store room office which Truong represented as containing Respondent's views on unionization. Truong told Kreiss that she provided all of the Castro store employees with this same 14-page packet from Respondent on or about June 15, 2022. (GC Exh. 5.)

At that time, Kreiss did not feel comfortable rejecting the 14-page packet on receipt from Truong because it was just handed to him without conversation by Truong. This June 15 meeting was the first time that Kreiss met with Truong where Store Manager Truong indicated to Kreiss that the meeting to receive the 14-page packet was mandatory for Kreiss to attend. Truong did not threaten Kreiss, however, if he did not read the packet of materials or if he refused to sit down and listen to Truong speak about the packet.

Kreiss further opines that Respondent's 14-page packet on unionization was dissuading employees from voting for a Union and unionizing by showing how long a Union might take to get a signed collective bargaining agreement (CBA). Kreiss also interprets the packet at pages 5-6 where Respondent specifically says about voting that Respondent believes that voting "no" is best for partners as meaning that Respondent suggests to all employees to vote "no" to unionization because Respondent is anti-Union and does not want a Union representation in all of its stores.

On June 15, Trainer also recalled seeing the same 14-page packet with Respondent's positions about unionization posted on the employee bulletin board in the back store manager's office/supply and breakroom. Trainer recalls that Truong approached Trainer individually in mid-June to discuss unionization of the Castro St. store in her store manager's back office one-on-one. (Tr. 149-152.)

Truong asked Trainer whether she could ask him a question when he first arrived to work for his shift while she was seated at her office desk behind her computer. Trainer was not wearing any Union insignia at this time of the meeting. Without any prior notice from Truong that they were going to discuss unionization and Trainer's opinions about the Union ahead of the meeting, Truong next asks Trainer whether he was pro-Union or not. (Tr. 152-154.)

Truong further asks Trainer "how do you feel about the Union?" (Tr. 152-153.)

Trainer responded hesitantly because he knew that Respondent was against unionization but Trainer eventually said that yes, he was pro-Union and in favor of the Union coming in at the Castro store. Trainer further explained that it was a “little nerve-racking” having Store Manager Truong put him on the spot like this when he first arrived to work given his awareness that Respondent was anti-Union at the time.

Trainer recalls that Truong next tells Trainer that “a unionization effort can take years to get a [CBA] contract. Trainer opined that he did not think he could ignore Store Manager Truong’s question to him about unionization because it was early in the day, he was nervous, and Respondent had made it clear that they are against having a union at their stores.

Trainer opined that Respondent’s 14-page packet contained information which conveyed to Respondent’s employees and Trainer that Respondent was anti-Union and wanted all its employees to vote “no” or against the Union coming into the Castro Street store. (Tr. 151; GC Exh. 5 at 6-7.)

The General Counsel alleges that on June 15, Truong violated Section 8(a)(1) when she interrogated Trainer about his and other employees’ union activity. In determining whether the questioning of an employee about union or other protected activity constitutes unlawful interrogation, the Board applies a totality-of-the-circumstances test. *Rossmore House*, 269 NLRB 1176, 1177 (1984), *affd. sub nom. HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). This test considers various factors, including: the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; the nature of the information sought; the identity of the interrogator, i.e., his or her placement in the employer’s hierarchy; whether the interrogated employee was an open or active union supporter at the time of the questioning; whether proper assurances were given concerning the questioning; the place and method of the interrogation; and the truthfulness of the interrogated employee’s reply. *Id.* See also *Westwood Health Care Center*, 330 NLRB 935, 939 (2000). The Board’s test utilizes an objective standard and is not based on the intent of the questioner or reaction of the questioned employee. *Multi-Ad Services*, *supra*. See also *Double D Construction Group*, 339 NLRB 303, 303-304 (2003). The Board has recognized that unlawful interrogation may include written communications, including texts and email messages. See *RHCG Safety Corp.*, 365 NLRB No. 88, slip op. 1-2 (2017).

Under the totality of the circumstances, I find Truong’s statements to Trainer constitute unlawful interrogation. She is the highest-ranking official at the Castro store, and she initiated the exchange to gather information about employees’ union activities, even though she already knew from Kreiss and other employees, but not Trainer, that they had filed a petition for an election on June 6. In addition, Respondent here has an extensive history of hostility toward or discrimination against union activity. See *Starbucks Coffee Co.*, 372 NLRB No. 50 (2023), and the various administrative law judge decisions finding unlawful anti-union conduct by Respondent in footnote 15 herein. Truong failed to convey any other, legitimate purpose for her inquiries; nor did she provide Trainer with any assurances against reprisals. See *RHCG Safety Corp.*, *supra* slip op. at 1-2; *Multi-Ad Services, Inc.*, *supra* at 1227-1228. Although Truong and Trainer would occasionally work together and chat, they had never discussed, and Trainer never volunteered, his views or plans about organizing. Trainer testified he and the others involved

planned to keep their organizing activities a secret from management until after the August 16 election. As such, he was not an open Union supporter until after the election in August 2022. But when Truong directly asked him whether he was for or against the Union, he answered his supervisor truthfully. Truong then probed further. She tells Trainer that “a unionization effort can take years to get a [CBA] contract. Trainer opined that he did not think he could ignore Store Manager Truong’s question to him about unionization because it was early in the day, he was nervous, and Respondent had made it clear that they are against having a union at their stores. The Board has held these types of questions further support finding unlawful interrogation. See *Hall of Mississippi, Inc.*, 249 NLRB 775, 781 (1980) (questioning employees what they hoped to gain by supporting union, without any other legitimate purpose, constituted unlawful interrogation). See also *Corl Corp.*, 222 NLRB 243 (1976) (supervisor coercively interrogated employee by asking how the union would benefit the employees), *enfd.* NLRB v. *Corl Corp.*, 547 F.2d 1171(7th Cir. 1977).

Respondent defends that Truong’s questioning was not unlawful because Trainer was open and honest about his support for the Union and continued to respond to her questions rather than discontinue the exchange. When a supervisor without warning initiates an exchange with an employee about their protected or union activities and does not advise the employee they are not obligated to participate in the exchange or answer the questions, the employee’s continued participation cannot reasonably be viewed as voluntary and does not absolve the supervisor of wrongdoing. Additionally, Trainer admitted that the meeting and Truong’s questions made him feel nervous and uncomfortable. While Trainer’s subjective feelings are irrelevant, as the Board has held that actual coercion is not the test for whether an interrogation violates Section 8(a)(1). *Oklahoma City Collection*, 263 NLRB 79, 81 (1982), *enfd.* mem. 679 F.2d 900 (9th Cir. 1982). Accordingly, in considering the totality of the circumstances, I conclude Truong’s June 15 one-on-one surprise meeting and statements and questioning of Trainer amounted to unlawful interrogation, in violation of Section 8(a)(1) of the Act.

5. *The July 14 Alleged Interrogation of Kreiss and Siri*

The General Counsel’s complaint at paragraphs 7(d) and 7(e) allege that about July 2022, Respondent, by Store Manager Truong, at the Castro Store, in two conversations, interrogated its employees about their union membership, activities, and sympathies. Specifically, I find that on July 14, 2022, Store Manager Truong approached Kreiss again about his opinion on unionization of the Castro store. This repeated question from Truong about unionization took place in the front of the store behind the bar where Kreiss and Siri were working and lasted about 20 minutes, Siri was also present and joined in the conversation between Truong and Kreiss.

Also, on July 14, 2022, Store Manager Truong asked Kreiss who he thought would be on the bargaining committee team for the Union if the Union won the upcoming August 16 election. Kreiss responded to Truong telling her that he did not feel comfortable sharing information about who would be on the bargaining committee for the Union. Kreiss understood Truong’s question to be asking him who among the Castro store employees he thought would be on the Union’s bargaining committee to negotiate a CBA with Respondent’s committee members.

Kreiss further responded to Truong that he was not sure who would be on the bargaining committee but he hoped that it would be as many employees as possible, including himself. Next, Kreiss referred Truong to the Workers United Union website if she wanted to learn more information. Truong responds to Kreiss telling him that she did not think it was legal for her to look at the Union's website information as Respondent's store manager.

Later, on July 14, Truong further asks both Kreiss and Siri: "Isn't unionizing a waste of time?" (Tr. 105.) Store Manager Truong then asks Siri why Siri cared about unionizing because it would take so long, implying to Siri that it was a long process to achieve a first CBA contract between the Union and Respondent and further asking Siri why Siri would personally care to join the Union because Siri had told Truong that she could not stay working at the Castro store long-term and that Siri was not planning on working at Respondent as a career because Siri was not earning enough money to survive on working at the Castro store.

Next, Siri responds to Truong saying "well, if we [employees] could negotiate our wages and we could get a higher salary, I [Siri] would love to stay at this job. I like the job." (Tr. 106.) Kreiss also recalled that Truong also mentioned to him that bargaining negotiations between the Respondent and the Union could take a long time to reach a first CBA which was consistent to Kreiss for how Respondent was presenting their position that a first CBA would take a long time to negotiate and get signed. Truong referred Kreiss to a CBA that took more than a year to reach in Canada between Respondent and a union in Canada.

Next, Truong asked Kreiss about the possibility that after bargaining and reaching a CBA Kreiss might have to live with terms in the contract that do not look so appealing such as some of the terms negotiated in the CBA in Canada. Later, on July 14, Truong asked Kreiss about how things would get resolved at the Castro store if the store were to be unionized.

Kreiss did not respond to Truong's latest unexpected and unwelcome question about unionization on July 14. This was during this approximate 20-minute conversation at the front bar station, therefore Kreiss felt uncomfortable just walking away from Truong and her questions because he was stationed behind the front bar and we was working his shift. (Tr. 89.)

The General Counsel alleges that on July 14, Truong violated Section 8(a)(1) when she interrogated both Kreiss and Siri about their and other employees' union activity. In determining whether the questioning of an employee about union or other protected activity constitutes unlawful interrogation, the Board applies a totality-of-the-circumstances test. *Rossmore House*, 269 NLRB 1176, 1177 (1984), *affd. sub nom. HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). This test considers various factors, including: the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; the nature of the information sought; the identity of the interrogator, i.e., his or her placement in the employer's hierarchy; whether the interrogated employee was an open or active union supporter at the time of the questioning; whether proper assurances were given concerning the questioning; the place and method of the interrogation; and the truthfulness of the interrogated employee's reply. *Id.* See also *Westwood Health Care Center*, 330 NLRB 935, 939 (2000).

Once again, under the totality of the circumstances, I find Truong’s statements and questions to Kreiss and Siri about unionization constitute unlawful interrogation. She is the highest-ranking official at the Castro store, and she initiated the exchange to gather information about employees’ union activities, even though she already knew from Kreiss, Siri, and other employees supported the Union. In addition, Respondent here has a history of hostility toward or discrimination against union activity. See *Starbucks Coffee Co.*, 372 NLRB No. 50 (2023), and the various administrative law judge decisions finding unlawful anti-union conduct by Respondent in footnote 15 herein. Truong failed to convey any other, legitimate purpose for her inquiries; nor did she provide Kreiss or Siri with any assurances against reprisals. See *RHCG Safety Corp.*, supra slip op. at 1-2; *Multi-Ad Services, Inc.*, supra at 1227-1228. Truong directly asked Kreiss and Siri who would be on the Union’s bargaining committee, why Siri cared about unionization if she was not a “long-term” employee, and inferred that reaching a signed CBA would take so long it was almost futile to try. Both Kreiss and Siri answered Truong’s unionization questions truthfully. Truong then probed further.

The Board has held these types of questions further support finding unlawful interrogation. See *Hall of Mississippi, Inc.*, 249 NLRB 775, 781 (1980) (questioning employees what they hoped to gain by supporting union, without any other legitimate purpose, constituted unlawful interrogation). Again, Truong offered no legitimate purpose for soliciting this information. The Board has recognized questions about the number of employees who support the union to be coercive. See *Cumberland Farms, Inc.*, 307 NLRB 1479 (1992) (supervisor engaged in unlawful interrogation by asking open union supporters about views and activities of others). See also *Sundance Construction Management*, 325 NLRB 1013 (1998) (supervisor’s question about how many of the employees supported the union constituted unlawful interrogation).

Respondent defends that Truong’s questioning was not unlawful because Kreiss and Siri were open and honest about their support for the Union and continued to respond to her questions rather than discontinue the exchange. When a supervisor without warning initiates an exchange with two employees while working a shift about their protected or union activities and does not advise the employees they are not obligated to participate in the exchange or answer the questions, the employees’ continued participation cannot reasonably be viewed as voluntary and does not absolve the supervisor of wrongdoing. Additionally, whether or not Kreiss or Siri felt coerced by the interrogation is irrelevant, as the Board has held that actual coercion is not the test for whether an interrogation violates Section 8(a)(1). *Oklahoma City Collection*, 263 NLRB 79, 81 (1982), enfd. mem. 679 F.2d 900 (9th Cir. 1982). Accordingly, in considering the totality of the circumstances, I conclude Truong’s July 14 statements and questioning of Kreiss and Siri amounted to unlawful interrogation, in violation of Section 8(a)(1) of the Act.

B. Truong’s Alleged Illegal Captive Audience Meetings with Respondent’s Employees

The General Counsel’s complaint paragraph 7(f) alleges that the conduct described above from May to July 2022 in complaint subparagraphs 7(a) through 7(e), occurred in unlawful captive audience meetings that Respondent required employees to attend during paid time addressing employees’ exercise of Section 7 rights, namely the choice whether to join the Union.

The General Counsel has alleged that Respondent violated the Act by calling employees into mandatory meetings during work hours to discuss unionization. Currently, an employer can lawfully exercise its free speech rights by holding captive audience meetings to discuss unionization. *Babcock & Wilcox Co.*, 77 NLRB 577, 578 (1948). Based upon this precedent, this allegation is dismissed.¹⁴

C. Respondent Discriminated Against Employees for Supporting the Union by Announcing and Enforcing a Stricter Application of Its Attendance and Punctuality Policy Once the Union Filed to Unionize the Castro Store

The General Counsel's complaint at paragraphs 8 and 9 alleges that beginning July 12, Respondent, by Store Manager Truong, at the Castro store, applied Respondent's Attendance and Punctuality policy selectively and disparately by enforcing the policy only after employees at the Castro store engaged in Union activity and filed the representation petition on June 6. In addition, beginning about July 12, 2022, Respondent, by Store Manager Truong, at the Castro Store, enforced the Attendance and Punctuality Rule described above and has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

It is undisputed that Kreiss openly supported the Union since at least June 6 and that Store Manager Truong had actual knowledge of Kreiss' protected union activity.

Moreover, animus is found against the Respondent in this case, as I note that animus may be found on the basis of an employer's demonstrated proclivity to violate the Act. *St. George Warehouse*, 349 NLRB 870, 878 (2007); *Wallace International de Puerto Rico*, 324 NLRB 1046, fn. 1 (1997); *Florida Steel Corp.*, 231 NLRB 923, 926, fn. 4 (1977). Here, the Board has previously determined that this Respondent has demonstrated union animus in committing numerous prior violations of the Act, including the unlawful discharge of employees. *Starbucks Corp.*, 372 NLRB No. 50, slip op. 2 (2023). Because of the numerous recent decisions finding that Starbucks has violated the Act at various facilities throughout the country, I also find the broadest order possible is appropriate based on widespread misconduct and a proclivity to violate the Act.¹⁵

¹⁴ Complaint ¶¶7(f), and 10 also allege that Truong unlawfully held captive audience meetings. These allegations are dismissed under the same rationale.

¹⁵ See also, administrative law judge (ALJ) decisions in Case Nos. 18-CA-293653, *Starbucks Corp.*, 2023 NLRB LEXIS 102 (March 3, 2023), Oak Creek, Wisconsin; 03-CA-285671, *Starbucks Corp.*, 2023 NLRB LEXIS 99 (March 1, 2023), various stores in Buffalo, New York; 07-CA-293742, *Starbucks Corp.*, 2023 NLRB LEXIS 61 (February 9, 2023), two locations in Ann Arbor, Michigan area; 27-CA-290551, *Starbucks Corp. LLC*, 2023 NLRB LEXIS 54 (February 6, 2023), Denver, Colorado; 19-CA-290905, *Starbucks*, 2023 NLRB LEXIS 35 (January 31, 2023), Seattle, Washington. In addition to the ALJ decisions cited by the General Counsel, ALJ decisions found violations of the Act at stores in Cases 18-CA-299560, *Starbucks Corp.*, 2023 NLRB LEXIS 159 (April 6, 2023), Minneapolis, Minnesota; 13-CA-96145, *Starbucks Corp.*, 2023 NLRB LEXIS 205 (May 2, 2023), two locations in the Chicago, Illinois; and 15-CA-290336 *Starbucks Corp.*, 2023 NLRB LEXIS 217 (May 4, 2023), Memphis, Tennessee. These decisions involve wide-ranging violations, including violations of 8(a)(1), (3), (4), and (5).

I further find that the General Counsel has met its initial *Wright Line* burden with respect to the allegations that the Respondent discriminated on the basis of union activity in violation of Section 8(a)(3) and (1) when Truong refused to promote Kreiss in July 2022 and imposed closer scrutiny on him. The record easily establishes the first two elements of the prima facie case of discrimination – that employees engaged in union activity and the Respondent was aware of that activity when it disciplined Kreiss by refusing to promote him to shift supervisor in July. Kreiss was one of the first employees who identified himself in support of unionization at the Castro store and posting GC Exh. 4 announcing the Union election and soliciting other employees to vote for union representation later in the summer. In addition, Kreiss displayed union insignia starting on or about June 6 at the Castro store while Truong was present. Not surprisingly, the Respondent was aware of these public, pro-union activities and Kreiss testified that he obtained permission from Truong to post June 10 union update poster at the Castro store bulletin board.

In addition to the Respondent's above-referenced general animus against unionization at all of its stores, including the Castro store, unlawful motivation is further evidenced by the timing of the Respondent's decision to discipline Kreiss by withholding his promotion to shift supervisor in July. On June 6, Respondent learned of the Castro store union campaign and Kreiss' involvement in it. Shortly thereafter, Truong announced that she was enforcing Respondent's Attendance and Punctuality policy in a much stricter manner and had Castro store employees re-sign the attendance policy. Then, the Respondent invoked the policy to withhold Kreiss' promotion to shift supervisor about one month after it found out about the union campaign. This timing is extremely suspicious on its face, and even more so given that there is no plausible explanation for the enforcement of a stricter attendance policy and requiring employees to re-sign the policy other than the presence of the union campaign and Truong's use of Kreiss as an example of what would have happened to other openly public employees who supported the Union going forward.

Based on the evidence discussed above, I find that the General Counsel has established all three elements of its initial *Wright Line* burden with respect to its adverse actions against Kreiss. Therefore, the burden shifts to the Respondent to show that it would have taken the same action of withholding Kreiss' promotion in July for lawful reasons even absent the union activity. *Manno Electric, Inc.*, 321 NLRB 278, 280 fn. 12 (1996). To establish this affirmative defense, an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity. *East End Bus Lines, Inc.*, 366 NLRB No. 180, slip op. at 1 (2018); *Consolidated Bus Transit*, 350 NLRB 1064, 1066 (2007). Where the General Counsel has made a strong showing of discriminatory motivation, the employer's defense burden is substantial. *East End Bus Lines*, *Ibid*; *Bally's Park Place, Inc.*, 355 NLRB 1319, 1321 (2010), *enfd.* 646 F.3d 929 (D.C. Cir. 2011).

As stated above, I find that the evidence here establishes that the reasons for Respondent's withholding Kreiss' promotion in July are pretextual and that the Respondent fails by definition to show that it would have taken the same action for those reasons, absent Kreiss' union activity, and Respondent's defense burden is substantial. As a result, I find that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily disciplining Kreiss by withholding his promotion to shift supervisor in July 2022 because of his union activity.

D. Threats During July 12 Meeting with Trainer

5 The General Counsel's complaint at paragraphs 8(a) to 8(c) alleges that beginning July 12, Respondent, by Store Manager Truong, at the Castro store, threatened employees that unionization would result in stricter enforcement of Respondent's Attendance and Punctuality policy in violation of Section 8(a)(1) of the Act. Specifically, I find that on about July 12, Store Manager Truong had Kreiss sign-off on Respondent's one-page Attendance and Punctuality rule from its handbook even though Kreiss had previously signed-off on receiving Respondent's full handbook of rules, policies and procedures when he was first hired by Respondent in 2018.

15 Kreiss explained that this Attendance and Punctuality policy handout was presented to him by Truong in her backroom office at the Castro store as a handout which Truong required Kreiss sign before the Union election on August 16, 2022. Kreiss thinks that his co-worker Siri might have been present for part of this meeting with Truong. Truong explained to Kreiss that she was handing him the Respondent's Attendance and Punctuality policy and requiring him to sign it again and return to her because as store manager she wanted to hold store employees, like Kreiss, more accountable and to more strictly enforce this punctuality policy against store employees going forward after June 6.

20 Kreiss opined that he did not feel comfortable immediately signing the one-page Attendance and Punctuality policy in Truong's presence because this felt like a way to hold employees accountable and dissuade them from voting for the Union. Next, Kreiss asked Truong if he could wait to sign-off on the policy until after he had a chance to discuss it with a Union representative.

25 Truong responded telling Kreiss that as of June 6, 2022, she would be strictly enforcing, writing up and disciplining employees who were late to work as described in Respondent's Attendance and Punctuality policy, GC Exh. 6, which was contrary to Truong's behavior and different from how Store Manager Truong enforced the same policy before June 6, 2022. (Tr. 49; GC Exh. 6.) Kreiss acknowledged how some employees would arrive late to work around this time due to unreliable Lyft or Uber rideshare drivers and through no fault of Respondent's employees.

35 Beginning on July 12, Castro store employees would be considered late and subject to discipline by Truong anytime they were late arriving for their scheduled start time. Kreiss described how Truong enforced the same Attendance and Punctuality policy differently before June 6, 2022 as typically if an employee was running late, a shift supervisor might text or call the employee who was running late to just see if they were on their way to work their shift, if they were ok, and just check on them. (Tr. 49.) Kreiss opined that usually before June 6, 2022, there would not be a discipline write-up in the case of an employee arriving late to a shift.

45 Kreiss further opined that this expressed change in enforcement of Respondent's Attendance and Punctuality policy after June 6, 2022, as explained by Truong, concerned Kreiss with how the policy might be implemented by Truong moving forward particularly after Truong required Kreiss to sign-off on it on July 14, 2022. (Tr. 50, 55; GC Exh. 6.)

Truong next told Kreiss that she was providing him with the policy to sign and that she intended to enforce the Attendance and Punctuality policy more strictly going forward “specifically because of an instance that happened a month prior where she considered [Kreiss] [showing up to work] late” – the potentially late incident referenced above. (Tr. 50-51.)

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Siri also met with Truong and Kreiss on or about July 12 and left the meeting with an understanding that going forward, Truong’s changed attendance and punctuality policy involved Siri and all shift supervisors not reaching out if an employee was running late for a shift and, instead, waiting to see if they do not call in to a shift supervisor to let them know they are running late and if the shift supervisor is not contacted by the late-running employee, it is considered a “no call, no show” and subject to discipline.

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Siri agreed that the policy she and other shift managers followed prior to this changed policy by Truong on June 6, 2022 was not contained in Respondent’s one-page attendance and punctuality policy – GC Exh. 6. (Tr. 127.) Moreover, Siri further explains that if an employee reached out to a shift supervisor and said they were running a little late prior to their shift start before June 6, 2022, the partner employee was not in violation of Respondent’s attendance and punctuality policy. (Tr. 127.)

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On July 15, 2022, the next day after being asked to sign-off on the Respondent’s Attendance and Punctuality policy, Kreiss further spoke with Truong about her new enforcement policy and Truong told Kreiss that she was concerned with how employees were showing up late in the morning. Also, on or about July 15, Truong handed Siri the same attendance and punctuality page she had Kreiss sign-off on and asked Siri to sign-off on the Respondent’s Attendance and Punctuality policy and return the signed page to Truong before the Union election in mid-August 2022. Siri did not recall any other store manager other than Truong in summer 2022 before the Union election asking her to sign-off on some specific Respondent rule or policy.

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I find that Respondent’s Attendance and Punctuality at its Castro store was either unenforced before June 6 or was loosely enforced in the way that Siri described above. I further find that as a result of the June 6 petition to unionize the Castro store, Store Manager Truong had several conversations with employees including Siri and Kreiss and threatened that unionization would result in stricter enforcement of Respondent’s Attendance and Punctuality policy particularly during the unionization campaign against known union supporters like Kreiss. Respondent’s heightened scrutiny of its Attendance and Punctuality policy violates Section 8(a)(1) of the Act. See *Miller Industries Towing Equipment, Inc.*, 342 NLRB 1074, 1074 (2004) (Board holds Employer violated Section 8(a)(1) by threatening that unionization would result in stricter enforcement of rules relating to lunch and break-times.). Moreover, Truong’s warnings of more strict enforcement of work rules and the resulting potential for being disciplined or discharged had a reasonable tendency to restrain, coerce, or interfere with employees’ exercise of their Section 7 rights, and therefore violated Section 8(a)(1) of the Act.

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CONCLUSIONS OF LAW

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1. Respondent, Starbucks Corporations, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent's Store Manager, Malisa Truong, is a supervisor within the meaning of Section 2(11) of the Act and an agent within the meaning of Section 2(13) of the Act.
3. On about June 9, 2022, Truong interrogated an employee about employee union activity or support, in violation of Section 8(a)(1) of the Act.
4. On about June 15, 2022, Truong interrogated an employee about employee union activity or support, in violation of Section 8(a)(1) of the Act.
5. On about July 14, 2022, Truong interrogated employees about employee union activity or support, in violation of Section 8(a)(1) of the Act.
6. On July 12, 2022, Truong threatened employees that engaging in union activity causes stricter enforcement of Respondent's Attendance and Punctuality policy in violation of Section 8(a)(1) of the Act.
7. Starbucks violated §8(a)(3) by disciplining and failing to promote Kreiss to shift supervisor in July 2022 because of his Union activity.
8. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
9. All other complaint allegations are dismissed.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, and because Starbucks has violated the Act at various facilities throughout the country, I shall order it a broad cease and desist order as possible and to take certain affirmative action designed to effectuate the policies of the Act. See footnote 15 herein.

Specifically, having found that Respondent violated Section 8(a)(3) and (1) by withholding Kreiss' promotion for a month, I order the Respondent to rescind the withheld promotion and notify Kreiss this has been done. Respondent must also revise its personnel records to reflect Kreiss' promotion in July rather than August 2022 from their records, and Respondent shall notify Kreiss in writing that this has been done and that the delayed promotion action will not be used against Kreiss in any way.

In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall compensate Kreiss for lost compensation associated with the delayed promotion and any other direct or foreseeable pecuniary harms incurred as a result of the unlawful delayed promotion to shift supervisor. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), Respondent shall compensate Kreiss for the adverse tax consequences, if any, of receiving a lump-sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), Respondent shall, within 21 days of the date the amount of backpay is fixed, either by agreement or Board Order, file with the Regional Director for Region 20 a report allocating backpay to the appropriate calendar year(s) for Kreiss, if any.

I order that Respondent post a notice at its Castro store in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. *Id. supra* at 13.

In addition, in accordance with *Containerboard Packaging-Niagara*, 370 NLRB No. 76, as modified in 371 NLRB No. 25 (2021), Respondent is ordered to file, with the Regional Director for Region 20, a copy of W-2 form reflecting the backpay award for Kreiss, if any.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.¹⁶

ORDER

Having found Respondent, Starbucks Corporation, has engaged in certain unfair labor practices, I find that it, through its officers, agents, successors, and assigns, must cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act:

1. Cease and desist from:
 - a. Interrogating employees about their union activity
 - b. Threatening employees that engaging in union activity causes stricter enforcement of Respondent's Attendance and Punctuality policy.
 - c. Disciplining and failing to promote Kreiss to shift manager in July 2022 because of their Union and other protected activities.
 - d. In any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

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

- a. Within 14 days after service by the Region, post at its 18th Street, San Francisco, California store, copies of the attached notice marked "Appendix A."¹⁷ Copies of the notice, on

¹⁶ 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.

¹⁷ 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 due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after

forms provided by the Regional Director for Region 20, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its members by such means. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by 30 any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at the facility at any time since June 6, 2022.

b. Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice at Appendix A is to be distributed to employees and then read to employees by a Board agent in the presence of a responsible management official and an agent of the Union if the Union so desires.

c. Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 31, 2023



Gerald Michael Etchingham
Administrative Law Judge

the facility reopens and a substantial complement of employees has returned to work, and the notices may not be posted until a substantial complement of employees has returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means.

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 A

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

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

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose 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 do anything to prevent you from exercising these rights.

WE WILL NOT interrogate employees about their or other employees' union activity or support.

WE WILL NOT threaten employees that engaging in union activity causes stricter enforcement of Respondent's Attendance and Punctuality policy.

WE WILL NOT violate §8(a)(3) and (1) by disciplining by failing to promote Kreiss to shift supervisor in July 2022 because of their Union and other protected activities.

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

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.nlr.gov

450 Golden Gate Avenue, 3rd Floor, Suite 3112, San Francisco, CA 94102-1735
(415) 356-5130, Hours: 8:30 a.m. to 5 p.m. Pacific Time

The Administrative Law Judge's decision can be found at www.nlr.gov/case/20-CA-298282 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 (628) 221-8875.