

24-3168, 24-3298

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SIREN RETAIL CORPORATION
d/b/a STARBUCKS RESERVE ROASTERY
Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD
Respondent/Cross-Petitioner

and

WORKERS UNITED
Intervenor

ON PETITION FOR REVIEW AND
CROSS-APPLICATION FOR ENFORCEMENT OF
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

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**ON PETITION FOR REVIEW AND
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AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

**STATEMENT OF SUBJECT MATTER
AND APPELLATE JURISDICTION**

This case is before the Court on the petition of Siren Retail Corporation
d/b/a Starbucks Reserve Roastery (“Siren”) to review, and the cross-application of

the National Labor Relations Board to enforce, a Board Order issued against Siren on November 27, 2024, and reported at 373 NLRB No. 140. (SA. 1-20.)¹ Workers United (“the Union”), the charging party below, has intervened in support of the Board.

The Board had jurisdiction over the proceeding below under Section 10(a) of the National Labor Relations Act, as amended. 29 U.S.C. §§ 151, 160(a). The Court has jurisdiction to review the Board’s final Order under Section 10(e) and (f) of the Act. 29 U.S.C. § 160(e) and (f). Venue is proper because the unfair labor practices occurred in New York, New York. The petition for review and application for enforcement were timely because the Act establishes no time limit for such filings.

STATEMENT OF THE ISSUES

1. Whether substantial evidence supports the Board’s finding that Siren violated Section 8(a)(1) of the Act by maintaining dress code policies—including a prohibition on wearing shirts with designs, logos, or writings—that restrict employees’ right to wear union and other protected paraphernalia at work.

¹ “JA.” references are to the joint appendix and “SA.” to the special appendix bound with Siren’s opening brief (“Br.”). References preceding a semicolon are to the Board’s findings; those following are to the supporting evidence.

2. Whether the Board, having appropriately found a violation based on the shirt prohibition, is entitled to summary enforcement of the portions of its Order remedying its otherwise uncontested findings that Siren violated Section 8(a)(1) of the Act by instructing employees to remove their union t-shirts and threatening to discipline employees who did not comply.

STATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

A. The New York Starbucks Reserve Roastery

Siren operates the Starbucks Reserve Roastery in New York City (“the Roastery”), which is distinct from the thousands of “neighborhood” Starbucks coffee shops throughout the country.² The Roastery is intended to provide a unique and immersive “Willy Wonka”-like coffee-making experience, with a “vibe” that is “steampunk” and “hipster chic.” (SA. 2, 8; JA. 78-80, 216-17, 219-22, 274, 284-89, 294-97, 303, 495-09.) Its 23,000-square-foot space spans three floors and includes: a coffee-roasting operation; the “main bar,” which serves traditional coffee beverages; the “experience bar,” where coffee beverages are crafted using a variety of non-standard techniques; Arriviamo, a bar serving

² Siren operates five additional Reserve Roasteries, located domestically and internationally, and several Starbucks Reserve stores. None of those locations are at issue in this case. (SA. 8 & n.4.)

coffee-infused alcoholic beverages; Princi, an on-site bakery; and a retail section selling a variety of Starbucks and Roastery-branded merchandise. (SA. 2, 8; JA. 45-46, 80, 89, 135, 265, 294-96, 300-04, 486-88, 491, 495-09.) It also has several unique features, including a custom 3,000-pound copper sculpture of the Starbucks siren and a Solari (clacker) board reminiscent of a train station. (SA. 8; JA. 293, 296-98, 497, 501.)

The Roastery employs numerous “partners” (i.e., employees) serving in a variety of roles. Many of these employees work as baristas and staff the main bar, the experience bar, and the retail area. Among other tasks, they prepare coffee beverages, demonstrate unique brewing techniques, assist customers with coffee-tasting experiences, and answer questions about the Roastery’s coffee. (SA. 8; JA. 46, 63, 80, 221, 294-96.) At times, baristas serve as “concierges” at the main entrance, welcoming customers into the store and educating them about where they can go and what experiences are available. (SA. 8; JA. 80-81, 221, 269-70.) Other employees act as operations leads, supervising the day-to-day operations of the store’s “bars.” (SA. 8; JA. 103, 268.)

B. The Roastery Dress Code

Siren maintains and enforces several policies that, taken together, comprise the dress code for employees at the Roastery.³ Siren views employees as brand ambassadors and part of the cast of characters who deliver the Roastery's immersive coffee experience. The Roastery design team consulted on the dress code to align it with the store's steampunk, hipster chic aesthetic. (SA. 2, 8; JA. 220-22, 239, 305, 308.) At issue are policies that govern the look of employees' shirts and restrict the number and type of buttons and pins worn by employees. (SA. 1-2, 4-5, 9-11 & n.16, 17-18.)

1. Clothing, including shirts

The dress code contains multiple provisions regulating the clothing, and especially the shirts, worn by baristas and operations leads assigned to the main bar, experience bar, and retail area. In general, those employees must wear dark blue or black jeans with the cuffs rolled up and a turtleneck or "long or short-sleeved button-down shirt with a collar." (SA. 2, 9-10; JA. 527, 535, 541.) Shirts

³ The policies are set forth in a series of documents provided to employees: the Starbucks Reserve Roastery and Tasting Room Retail Addendum to the Starbucks Partner Guide – U.S. Store Edition (January 2021) (JA. 527-32); the Partner Dress Code (JA. 534-37); the Dress Code Look Book (JA. 539-46); and the Summer Dress Code Guidelines (JA. 548-49). (SA. 9; JA. 175-77, 244, 522 ¶11.) Although the specific language used to describe certain policies sometimes differs from document to document, those differences are immaterial here. (SA. 9 & n.9, 10 & n.10.)

“must be a solid color, simple pattern or print.” (SA. 2, 9; JA. 527, 535, 541.) The color palette for shirts, which has evolved over time, allows employees to select from “[m]uted color tones of red, orange, yellow, green, blue, brown, purple, black, brown and white,” khaki, navy, and grey. (SA. 2 & n.9, 10 & n.10; JA. 104-05, 149, 535, 541.) Moreover, shirts “may have a small manufacturer’s logo, but must not have any other . . . designs, logos or writings” (“the no-logos policy”). (SA. 2, 9; JA. 527.)

There are two notable exceptions to the no-logos policy. The dress code permits baristas and operations leads to wear “Roastery Merch Shirts” and “Partner Networks shirts” on top of the required collared shirt or turtleneck. (SA. 2, 10; JA. 225-26, 320, 535, 541.) “Roastery Merch Shirts” are Starbucks- and Roastery-branded shirts sold in the store’s retail area—for example, t-shirts with “COFFEE COFFEE COFFEE” down the front or an artistic depiction of Starbucks’ siren covering the front.⁴ (SA. 2, 3, 10, 17; JA. 488, 491.) “Partner Networks shirts” are issued by the 10-12 groups within Siren that celebrate shared employee backgrounds, such as Hispanic, African American, or Pan-Asian heritage, or

⁴ Employees must purchase these t-shirts, but they receive a discount. (SA. 11 n.12; JA. 226.)

veteran status.⁵ Partner Network t-shirts are usually black or dark green, but sometimes blue or brown. They feature a small logo on the upper left front and a small message on the back, such as “Hora Del Café” (coffee time) for the Hispanic Partner Network. The designs for Partner Network t-shirts change yearly. (SA. 2, 10-11; JA. 320-28.) In the summer, baristas working on the Roastery’s outside patio may wear a t-shirt without a collared shirt underneath, but only if it is a company-branded or a Partner Network t-shirt. (SA. 10; JA. 105, 179-80, 313, 326, 548-49.)

In addition to shirts, the dress code regulates other aspects of employee attire. Baristas and operations leads typically must wear custom aprons that complement the store’s steampunk, hipster-chic vibe, and the aprons must be worn over all other clothing. (SA. 2, 8, 10; JA. 217-19, 254, 290-91, 481-83, 527, 535, 548-49.) The dress code permits baristas and operations leads to select certain accessories, such as “[f]un dress socks, handkerchiefs, ties, [and] bowties,” and to wear a range of hats—flat, fedora, panama, trilby, beret, company-branded beanies—in approved colors of black, white, gray, brown, khaki, or beige. (SA. 2, 10; JA. 535, 541.)

⁵ Employees apply for membership in the desired Partner Network(s) and, if admitted, then they receive t-shirts without charge. (SA. 10-11; JA. 321-24.)

2. Buttons and pins

The dress code states that employees “may only wear buttons or pins” that are issued to the employee “for special recognition or for advertising” company-sponsored events or promotions, company-approved “pins representing a partner network,” or Black Lives Matter pins. (SA. 2, 11 & n.15; JA. 529.) The dress code contains no limit on the number of the preceding buttons or pins that employees may wear. (SA. 5; JA. 529.) However, the dress code limits employees to “one reasonably sized and placed button or pin that identifies a particular labor organization or [an employee’s] support for that organization” (“the single-union-pin policy”). (SA. 2, 11; JA. 529.) The dress code further provides that employees are “not permitted to wear buttons or pins that advocate a political, religious, or personal issue” (“the no-advocacy-pins policy”). (SA. 2, 11; JA. 529.)

C. Employees Wear Union T-Shirts at Work; a Manager Instructs Them To Remove Their Union T-Shirts, and Tells an Employee She Will Be Disciplined If She Does Not Comply

On September 19, 2022, five to seven employees, including Ashley Kido and Laura Garza, engaged in a coordinated effort to wear union t-shirts under their aprons while working at the Roastery’s main coffee bar. (SA. 11 & n.19; JA. 48-50, 88, 106-07, 119-20, 131, 163, 177.) The front of each black t-shirt featured a green and white circular graphic with the words “Starbucks Workers United” surrounding an image of a raised hand holding a coffee shaker. (SA. 11; JA. 511.)

At some point that morning, Operations Manager Alex Sariyan took Kido aside and said that the union t-shirt was not compliant with the dress code. Kido replied that the National Labor Relations Board permitted employees to wear the shirt. Sariyan said he did not know anything about that and asked Kido to remove the union t-shirt. He added that, if she did not, then she would be written up. After a further discussion, Sariyan told Kido she could have a few minutes to change her shirt. (SA. 11; JA. 108-09, 121-26, 164-67.)

Kido proceeded downstairs, where she conferred with a waiting union representative. Afterward, Kido went upstairs and spoke with Sariyan in front of several employees wearing the union t-shirt. Kido stated that federal law allowed her to wear the union t-shirt at work and she handed him a slip of paper allegedly confirming her belief. Sariyan refused to read the paper. He asked Kido to change out of the union t-shirt and said if she did not, then she would receive a written warning. Kido inquired whether she would still receive a written warning if she changed her shirt. Sariyan replied that she would not. Kido and the other employees then changed out of the union t-shirts and resumed their shifts. (SA. 11-12; JA. 109-11, 127-32, 167-69.)

The same morning, employee Garza wore the union t-shirt while operating an espresso machine at the main bar. At some point, Sariyan began making drinks alongside her and remarked that the shirts looked “brand new or fresh.” (SA. 12;

JA. 52.) In response, Garza said that was how she liked to wear the shirt. Sariyan then told Garza she could go downstairs and change out of her shirt. Garza complied. (SA. 12; JA. 52, 76.) No employees were disciplined for wearing union t-shirts on September 19. (SA. 12; JA. 92-93, 133, 169, 524 ¶24.)

II. PROCEDURAL HISTORY

After investigating an unfair-labor-practice charge filed by the Union, the Board's General Counsel issued a complaint alleging that Siren violated Section 8(a)(1) of the Act, 29 U.S.C. §158(a)(1), by maintaining a dress code that prohibited employees from wearing: 1) more than one pin or button in support of a labor organization; 2) shirts with designs, logos, or writings other than a small manufacturer's logo; and 3) buttons or pins advocating a political, religious, or personal issue. The complaint further alleged that Siren violated Section 8(a)(1) by instructing employees to remove their union t-shirts and threatening to discipline employees who did not comply. (SA. 7 & n.1; JA. 381, 383-87, 449-53, 478-79.)

Following a hearing, an administrative law judge found, based on the credited evidence, that Siren had violated the Act as alleged, except in regard to the single-union-pin allegation. The judge found that the Court had upheld a "nearly identical" single-union-pin policy in *NLRB v. Starbucks Corp.*, 679 F.3d 70 (2d Cir. 2012). (SA. 14.) Accordingly, applying principles of issue preclusion, the judge dismissed the single-union-pin allegation. (SA. 7, 13-19.) Siren, the

General Counsel, and the Union each filed exceptions to aspects of the judge's decision.

III. THE BOARD'S CONCLUSIONS AND ORDER

On review, the Board (Chairman McFerran and Members Prouty and Wilcox) affirmed the judge's unfair-labor-practice findings. In addition, reversing the judge's issue-preclusion analysis, the Board found that Siren violated Section 8(a)(1) of the Act by limiting employees to wearing one union pin. (SA. 1, 3-5.)

The Board's Order requires Siren to cease and desist from the unfair labor practices found and from, in any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act. Affirmatively, the Order requires Siren to rescind the three unlawful dress code provisions and make the rescission known to employees; in doing so, Siren may choose to circulate lawfully worded provisions. Siren must also post a remedial notice. (SA. 5-6.)

STANDARD OF REVIEW

The Court’s review of a Board decision is “quite limited.” *HealthBridge Mgmt., LLC v. NLRB*, 902 F.3d 37, 43 (2d Cir. 2018) (quoting *NLRB v. Katz’s Delicatessen of Houston St., Inc.*, 80 F.3d 755, 763 (2d Cir. 1996)). When supported by substantial evidence on the record as a whole, the Board’s findings of fact are “conclusive.” 29 U.S.C. § 160(e). Evidence is substantial when “a reasonable mind might accept [it] as adequate to support a conclusion,” *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951), a standard that is satisfied “even if” the supporting evidence “is not preponderating in th[e] court’s view,” *NLRB v. Caval Tool Div., Chromalloy Gas Turbine Corp.*, 262 F.3d 184, 188 (2d Cir. 2001) (quoting *NLRB v. Interboro Contractors Inc.*, 388 F.2d 495, 499 (2d Cir. 1967)). Thus, the Court reverses a Board factual finding “only . . . if, after looking at the record as a whole, [it is] left with the impression that no rational trier of fact could reach the conclusion drawn by the Board.” *Katz’s Delicatessen*, 80 F.3d at 763 (quoting *NLRB v. Albany Steel, Inc.*, 17 F.3d 564, 568 (2d Cir. 1994)).

The Court “reviews the Board’s legal conclusions to ensure that they have a reasonable basis in law.” *Caval Tool*, 262 F.3d at 188.⁶

⁶ Siren’s passing (and unargued) citation to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), has no bearing on the largely fact-based issues before the Court. (Br. 28.) In *Loper Bright*, the Supreme Court overruled the deference framework of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *See* 603 U.S. at 407-12. Nonetheless, the Supreme Court left substantial-evidence review intact, *id.* at 391-92, and reaffirmed that Congress may enact statutes granting discretionary authority to expert agencies tasked with “prescrib[ing] rules to ‘fill up the details’ of a statutory scheme,” *id.* at 395. When reviewing the decisions of such agencies, courts satisfy their own assigned role by ensuring the agency acted within the “boundaries of [the] delegated authority” and “engaged in ‘reasoned decisionmaking.’” *Id.* (citing, *inter alia*, *Allentown Mack Sales v. NLRB*, 522 U.S. 359 (1998)). That acknowledgment of agency discretion applies with particular force here, given the Supreme Court’s longstanding recognition—since the earliest years of the Act—that Congress entrusted the Board with discretion to “formulate rules to fill the interstices of the broad statutory provisions.” *NLRB v. Curtin Matheson Sci.*, 494 U.S. 775, 786-87 (1990) (quoting *Beth Israel Hosp. v. NLRB*, 437 U.S. 483, 501 (1978)) (citing cases).

ARGUMENT SUMMARY

1. Substantial evidence supports the Board’s findings that Siren violated Section 8(a)(1) of the Act by maintaining policies prohibiting employees from wearing more than one union pin or button and from wearing union shirts. The policies unquestionably curtail employees’ Section 7 right to wear union insignia and apparel, and therefore, under longstanding precedent, they are presumptively unlawful, unless justified by special circumstances.

a. Substantial evidence supports the Board’s finding that Siren failed to prove its asserted public-image justification for the single-union-pin policy. Siren adduced no evidence as to how the Roastery’s public image would be affected if employees wore more than one union pin. Indeed, the Roastery already allows employees to wear a range of attire, adornments, and pins.

Opting not to directly dispute the substance of the Board’s special-circumstances analysis, Siren instead presses several other challenges, none of which have merit. The Board properly rejected Siren’s assertion that the Court’s decision in *Starbucks* compelled a finding that the single-union-pin policy was lawful. As the Board found, *Starbucks* and this case do not involve the “same issue,” a prerequisite for issue preclusion. Siren’s argument that *Starbucks* “controls” this case also misses the mark by focusing on the mere similarity of dress-code provisions across the cases; the operative analysis—whether an

employer has proven special circumstances—is a highly fact-dependent, case-specific determination that necessarily takes into account the context of the disputed dress-code provisions.

b. Substantial evidence also supports the Board’s finding that Siren failed to justify its outright ban on union shirts. Siren’s ostensible public-image justification—employees should blend into the Roastery’s background—is undermined by the dress code’s expansive color palette and exceptions for company-branded and Partner-Network shirts bearing designs and writings. Thus, the dress code permits employees to draw attention to themselves, their attire, and causes they identify with. And the no-logos policy is not narrowly tailored because it is a categorical ban on all union shirts, including ones that comport with the dress code. Siren disputes the rejection of its special-circumstances argument, but the Board considered and reasonably rejected its unfounded claims.

Siren fares no better with its assertion that the Board erred by relying on its decision in *Tesla*. That case simply reaffirmed established, judicially approved principles, which control here. The Board’s Order also does not infringe on Siren’s free-speech rights or run afoul of the First Amendment, and Siren’s contrary arguments are factually and legally unfounded.

c. The Court should summarily affirm the Board’s finding that Siren violated Section 8(a)(1) of the Act by maintaining a policy prohibiting employees

from wearing buttons or pins advocating for a political, religious, or personal issue. The Board properly disregarded Siren's exception to the administrative law judge's finding of this unfair labor practice because Siren urged no argument in support of its exception. Having failed to urge any objection before the Board, Siren is barred from challenging the finding on review. In any event, the Board would have adopted the judge's finding, because the policy restricts employees' right to wear insignia expressing concerted complaints about working conditions and it is not justified by special circumstances.

2. The Board found, based on ample, credited evidence, that Siren violated Section 8(a)(1) of the Act by instructing employees to remove their union t-shirts and threatening to discipline employees who did not comply. There is no dispute that Siren took those actions pursuant to its no-logos policy. Because that policy is unlawful, and because Siren raises no other challenges to the instruction and threat findings, the Court should summarily affirm those violations and enforce the Order insofar as it remedies them.

ARGUMENT

I. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD’S FINDING THAT SIREN VIOLATED SECTION 8(a)(1) OF THE ACT BY MAINTAINING DRESS-CODE POLICIES THAT INTERFERE WITH EMPLOYEES’ STATUTORY RIGHTS

A. Employees Have a Right To Wear Union and Other Protected Paraphernalia at Work, and Restrictions of that Right Are Unlawful Absent Demonstrated Special Circumstances

Section 7 of the Act guarantees employees “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.”

29 U.S.C. § 157. In turn, Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to “interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [S]ection 7.” 29 U.S.C. § 158(a)(1).

As the Supreme Court has long recognized, the rights guaranteed to employees by Section 7 “necessarily encompass[] the right effectively to communicate with one another regarding self-organization at the jobsite.” *Beth Israel Hosp. v. NLRB*, 437 U.S. 483, 491 (1978); accord *NLRB v. Springfield Hosp.*, 899 F.2d 1305, 1311 (2d Cir. 1990). It is therefore well established that employees have a Section 7 right to wear union-related paraphernalia (pins, buttons, shirts) while at work to communicate about self-organization rights or show support for a union. See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793,

802 n.7, 803-04 (1945). In addition, the protection afforded to employees under Section 7 unquestionably extends to wearing paraphernalia that, although unrelated to a labor organization, expresses employees' concerns over the terms and conditions of their employment. *See, e.g., In-N-Out Burger, Inc. v. NLRB*, 894 F.3d 707, 711-14 (5th Cir. 2018) ("Fight for \$15" wage button); *Medco Health Sols. of Las Vegas, Inc.*, 364 NLRB 1687, 1687, 1689-93 (2016) (t-shirt stating, "I don't need a WOW to do my job," where "WOW" referred to company's non-monetary incentive program).

At times, however, employees' exercise of Section 7 rights in the workplace may come into conflict with their employer's legitimate interest in controlling its property and operating its business. To aid in balancing the conflicting interests in such cases, the Board, with Supreme Court approval, has developed certain legal presumptions, often adjusting them to account for the particularities of the industry and the activity at issue. *See Beth Israel*, 437 U.S. at 491-95 & n.10 (explaining history of the Board's presumptions). In most employment contexts, the governing presumptions are that union and other protected paraphernalia may be worn at any time and that a restriction of that right violates Section 8(a)(1) of the Act, unless the employer rebuts the presumption by demonstrating "special circumstances" justifying the restriction. *Republic Aviation*, 324 U.S. at 801-04; *W San Diego*, 348 NLRB 372, 373 (2006).

Relevant here, “[t]he Board has found special circumstances justifying proscription of union [or other protected paraphernalia] when their display may . . . unreasonably interfere with a public image that the employer has established, as part of its business plan, through appearance rules for its employees.” *Bell-Atl.-Pa., Inc.*, 339 NLRB 1084, 1086 (2003), *enforced sub nom. Commc’ns Workers of Am., Local 13000 v. NLRB*, 99 F. App’x 233 (D.C. Cir. 2004). In evaluating the lawfulness of a public-image-based rationale for restricting employees’ right to wear union or other protected paraphernalia at work, the Board examines the particular circumstances of the case, assessing the asserted business objective on the one hand, and the restriction’s breadth or the affected paraphernalia on the other. *See Bell-Atl.-Pa.*, 339 NLRB at 1086-87; *Nordstrom, Inc.*, 264 NLRB 698, 700 (1982).

When an employer claims special circumstances based on an allegedly unreasonable interference with its public image, the employer must demonstrate both its deliberate cultivation of a particular image as part of its business plan, and that the limitations it has imposed are narrowly tailored to protect that image without overly impeding its employees’ rights. *Boch Honda*, 362 NLRB 706, 707-08 (2015), *enforced sub nom. Boch Imports, Inc. v. NLRB*, 826 F.3d 558 (1st Cir. 2016); *Bell-Atl.-Pa.*, 339 NLRB at 1086; *W San Diego*, 348 NLRB at 373-74; *Nordstrom*, 264 NLRB at 701-02. Under settled Board precedent, the potential for

“customer exposure to union insignia, standing alone,” is not a special circumstance, *P.S.K. Supermarkets, Inc.*, 349 NLRB 34, 35 (2007); *see also Able Disposal*, 322 NLRB 244, 244 (1996); *Meijer, Inc.*, 318 NLRB 50, 50 (1995), *enforced*, 130 F.3d 1209 (6th Cir. 1997), and neither is a “requirement that employees wear a uniform,” *AT&T*, 362 NLRB 885, 887 (2015); *see also P.S.K. Supermarkets*, 349 NLRB at 35.

B. Siren Unlawfully Maintained a Policy Prohibiting Employees from Wearing More than One Union Pin or Button

Applying the established presumption that limitations on employees’ Section 7 right to wear union insignia at work are unlawful, the Board found that the dress code’s single-union-pin policy curtailed employees’ statutory rights and that, if unsupported by special circumstances, the policy would be unlawful. (SA. 4-5.) *See, e.g., Serv-Air Inc.*, 161 NLRB 382, 402, 416-17 (1966) (prohibition on wearing more than one union button unlawful where not justified by special circumstances), *enforced in relevant part*, 395 F.2d 557 (10th Cir. 1968). The Board then considered whether Siren met its burden of proving special circumstances. As shown below, substantial evidence supports the Board’s finding that it did not. (SA. 4-5.)

1. Siren’s interest in maintaining its public image does not justify limiting employees to a single union pin

Before the Board, Siren claimed its policy restricting employees to wearing just one union pin was “justified because [it is] necessary to the maintenance of the Roastery’s public image.” (SA. 4.) The Board, however, found that Siren had “not proven special circumstances justifying the one-pin policy.” (SA. 5.) Specifically, Siren “presented no evidence on how employees wearing more than one union pin would interfere with” Siren’s public image—namely, a steampunk, hipster chic “Willy Wonka”-type coffee experience. (SA. 4.)

As the Board found and the evidence shows, baristas and operations leads do not wear “one standard uniform,” and the dress code permits a variety of attire. Thus, the employees are not “limited” to wearing any specific color. (SA. 5.) To the contrary, they are free to wear shirts in a wide range of colors, including not just black, brown, and white “but ‘muted colors’ of blue, green, yellow, red, orange and purple.” (SA. 5.) And the “permitted ‘look’” for shirts allows even further variation: employees may choose to wear Starbucks- and Roastery-branded shirts or Partner Network t-shirts, with the latter adding “10 to 12 varieties [of shirts] in multiple colors” into the mix. (SA. 5.)

Moreover, “[a]dornments were far from prohibited,” with employees free to express themselves by wearing “fun socks,” bow ties, fedoras, berets, and other embellishments. (SA. 5.) In short, “there was no single ‘look’ that would be

marred if some employees chose to add another union pin.” (SA. 5.) *Compare W San Diego*, 348 NLRB at 372-73 (special circumstances justified ban on adornments other than employer-issued, half-inch silver “W” pin, where employer commissioned distinct all-black uniforms for public-facing employees to foster unique “Wonderland” experience for hotel guests), *with Home Depot USA, Inc.*, 373 NLRB No. 25, 2024 WL 726240, at *14 (Feb. 21, 2024) (no public-image-based special circumstances where employees freely customized employer-issued aprons with designs, symbols, and slogans of their choosing), *petition & cross-application filed*, Nos. 24-1406 & 24-1513 (8th Cir.) (argued June 11, 2025), *and AT&T*, 362 NLRB at 887-88 (no public-image-based justification for ban on union insignia where for many years employees freely wore variety of non-company-branded apparel).

Additionally, the asserted public-image defense was undermined by the plethora of pins worn by employees. As the Board found, Siren “permitted employees to wear as many Starbucks and [Partner Network] pins as they liked as well as Black Lives Matter pins.” (SA. 5 (footnote omitted); JA. 257.)

Accordingly, “[b]oth the variety and number of pins belies any argument by [Siren] that additional union pins would conflict with its ‘steampunk’ atmosphere or public image.” (SA. 5 (citing cases).) *See, e.g., In-N-Out Burger*, 894 F.3d at 717-18 (public-image defense for ban on unauthorized buttons undermined by

requirement that employees wear annual Christmas and charity buttons); *AT&T*, 362 NLRB at 886, 888 (public-image defense failed where, without issue, employees had worn unapproved non-union buttons and stickers similar in size and color to prohibited union buttons and stickers). Because Siren failed to establish special circumstances, substantial evidence supports the Board’s finding that Siren violated Section 8(a)(1) of the Act by maintaining its policy prohibiting employees from wearing more than one union pin or button.⁷ (SA. 5.)

As discussed below, Siren’s opening brief raises various challenges to this unfair-labor-practice finding. However, it does not directly dispute the substance of the Board’s preceding analysis rejecting a public-image justification for maintaining the single-union-pin policy.⁸ (Br. 29-40.) Therefore, Siren has waived any arguments it might have had about aspects of that analysis or the Board’s overall finding that the single-union-pin policy is not justified by special circumstances. *JP Morgan Chase Bank v. Altos Hornos de Mex., S.A. de C.V.*, 412

⁷ As the Board further found, Siren also did “not even attempt to prove that its limitation was narrowly tailored” to the asserted special circumstance. (SA. 5 & n.14.) That failure provides additional support for the Board’s finding that Siren did not meet its burden of justifying the single-union-pin policy.

⁸ Although the opening brief contains special-circumstances arguments (Br. 63-67), they pertain only to the other policies at issue in this case. *See responsive arguments pp.36-38, 55-56 & n.20.*

F.3d 418, 428 (2d Cir. 2005) (arguments not made in opening brief waived, even if belatedly raised in reply brief).

2. The doctrine of collateral estoppel or issue preclusion does not compel a finding that the single-union-pin policy was lawful

Before the Board, Siren invoked the doctrine of collateral estoppel (now commonly referred to as “issue preclusion”) to argue that the Court’s decision in *NLRB v. Starbucks Corp.*, 679 F.3d 70 (2d Cir. 2012), compelled a finding that the single-union-pin policy was lawful. (SA. 1, 3, 13; A. 567-78.) The Board properly rejected this argument. (SA. 3.)

Issue preclusion “preclude[s] relitigation of both issues of law and issues of fact if those issues were conclusively determined in a prior action.” *United States v. Stauffer Chem. Co.*, 464 U.S. 165, 170-71 (1984). The doctrine may apply in cases involving federal agencies, such as the Board, “where the government is litigating the same issue arising under virtually identical facts against the same party” in a subsequent proceeding. *Id.* Accordingly, the Court has held that “the bar of issue preclusion applies only if . . . the issues in both proceedings are identical.” *Local 32B-32J Serv. Emps. Int’l Union v. NLRB*, 982 F.2d 845, 849 (2d Cir. 1993) (quoting *In re PCH Assocs.*, 949 F.2d 585, 593 (2d Cir. 1991)) (listing requirements for issue preclusion). As explained below, the Board found that “this

case does not involve the ‘same issue’” as *Starbucks* and, therefore, that issue preclusion does not apply. (SA. 3.)

a. The Board’s and the Court’s decisions in *Starbucks*

Over a decade ago, the Board found that Starbucks unlawfully promulgated and enforced a rule at certain New York City stores that limited employees to wearing only one union button or pin.⁹ *Starbucks Corp.*, 354 NLRB 876, 880-81, 876 (2009), *affirmed*, 355 NLRB 636 (2010). All of the stores involved in the case were neighborhood coffee shops (SA. 2), where the dress code required employees to wear “plain black or white” tops and “solid black or khaki” bottoms, *id.* at 886, to “ensure that [employees] ‘present a clean, neat, and professional appearance,’” *id.* at 887. After considering all the circumstances presented, the Board rejected Starbucks’ public-image-based justification for the limitation on union buttons and pins. *Id.* at 876. The Board found that Starbucks encouraged employees to wear multiple company-sponsored buttons, the union buttons at issue were “no more conspicuous” than the numerous approved buttons, and “the image conveyed to the

⁹ Employees could wear Starbucks-approved buttons or pins and “reasonably-sized-and-placed buttons or pins that identify a particular labor organization or a[n] [employee’s] support for that organization.” *Starbucks Corp.*, 354 NLRB 876, 884 (2009). Starbucks interpreted that language as limiting employees to just one union button or pin. *Id.* at 887.

consumer was merely that of employees wearing a variety of pins and buttons.”

Id. at 876.

On review, the Court declined to enforce the Board’s order as it pertained to the one-button limitation. *Starbucks*, 679 F.3d at 78, 82. Starbucks, the Court reasoned, was “entitled to oblige its employees to wear buttons promoting its products,” and “to avoid the distraction from its messages that a number of union buttons would risk.” *Id.* at 78. The Court pointed to evidence that one employee tried to wear eight union pins, which “risk[ed] serious dilution of the information contained on Starbucks’s buttons.” *Id.* The Court held that Starbucks’ restriction avoided such risk while “adequately maintain[ing] the opportunity to display pro-union sentiment by permitting one, but only one, union button on workplace clothing.” *Id.* Accordingly, the Court concluded that Starbucks “met its burden of establishing that the one button restriction [was] a necessary and appropriate means

of protecting its legitimate managerial interest in displaying a particular public image through the messages contained on employee buttons.” *Id.*¹⁰

b. This case does not involve the “same issue” as *Starbucks*, and therefore *Starbucks* does not have preclusive effect here

Applying issue-preclusion principles, the Board found—and the evidence confirms—that “this case does not involve the ‘same issue’ as the earlier litigation involving the neighborhood stores.” (SA. 3.) Indeed, “[t]he ‘same issue’ requirement is met only where the facts in the two proceedings are ‘virtually identical’”—a high bar, and one that is not met here, given that the “facts in this case differ significantly” from those in *Starbucks*. (SA. 3 (quoting *Stauffer Chem.*, 464 U.S. at 173).)

¹⁰ As the Board noted, it “has a policy of nonacquiescence in adverse circuit court decisions.” (SA. 3 n.10, citing *Sunbelt Rentals, Inc.*, 372 NLRB No. 24, 2022 WL 18107713, at *25 n.40 (Dec. 15, 2022).) Contrary to Siren’s claims (Br. 36-40), there was nothing improper in the Board’s brief reference to this policy, as a preliminary matter before considering the allegedly preclusive effect of *Starbucks*. Nor does the Board’s nonacquiescence to the Court’s fact-based *Starbucks* holding bear any resemblance to the broader nonacquiescence—on rules of law—involved in the cases Siren cites. *See, e.g., Heartland Plymouth Court MI, LLC v. NLRB*, 838 F.3d 16, 19 (D.C. Cir. 2016) (criticizing Board for not applying the court’s standard for evaluating contractual waiver of statutory bargaining right); *Ithaca Coll. v. NLRB*, 623 F.2d 224, 226-30 (2d Cir. 1980) (criticizing Board for not applying circuit precedent holding that full-time faculty at private institutions are not statutory employees).

As discussed above, *Starbucks* involved neighborhood stores where “the employees were restricted to wearing black or white tops and black, white, or khaki bottoms in order to present a ‘clean, neat, and professional appearance.’” (SA. 3 (quoting *Starbucks*, 679 F.3d at 72).) “Here, by contrast,” Roastery employees may choose from a wide range of attire. (SA. 3.) In particular, employees choose the style of their shirt (simple pattern or print, or solid color) and select from a wide range of colors, including “orange, purple, red, yellow, brown and khaki.” (SA. 3.) Employees may also elect to wear company-branded or Partner Network t-shirts “in a dozen varieties,” various styles of hats in a half-dozen approved colors, and a range of accessories, such as “fun socks,” handkerchiefs, and bow ties. (SA. 3.) Thus, unlike the prescribed uniform public image in *Starbucks*, the “whole point” is for Roastery employees to pick a variety of attire to appear “hip and trendy” and “present a ‘steampunk, hipster’ vibe.” (SA. 3.)

Based on the different factual records in each case, and consistent with its individualized assessment of special circumstances (pp.19-20), the Board therefore found that the “issue of whether Starbucks had proven special circumstances to justify its one-pin limitation in the neighborhood stores is clearly not the ‘same issue’ as whether [Siren] can show special circumstances in the New York City Roastery.” (SA. 3-4.) Accordingly, the Board properly determined that issue

preclusion did not apply and, consequently, that it was not prevented from evaluating the lawfulness of the single-union-pin policy effective at the Roastery. (SA. 4.)

Siren quibbles with the Board’s issue-preclusion analysis, claiming that the distinctions between the overall dress code at the neighborhood stores and the overall dress code at the Roastery provide an “improbable ground” for resolving the issue-preclusion question. (Br. 34.) In making that claim, however, Siren fails to acknowledge—let alone grapple with—the factors required to apply issue preclusion to a later proceeding, including that the facts in the two proceedings must be “virtually identical.” Contrary to Siren’s claim, it was entirely appropriate for the Board to consider the different facts presented in the two cases in determining whether they involved essentially the same issue. Indeed, had the Board done otherwise, it would not only have flouted basic principles governing issue preclusion, it also would have ignored that the “issue” in these cases is whether special circumstances justified the employer’s restriction on employees’ Section 7 rights—a highly fact-intensive and case-by-case determination (pp.19-20, 30-31).

3. *Starbucks* does not “control” this case

Having unsuccessfully argued issue preclusion before the Board, Siren takes a different approach before the Court and broadly asserts that *Starbucks* “controls

this case.” (Br. 33, 40.) Specifically, Siren maintains that because the policy restricting union buttons and pins at the Roastery is essentially the same as that in *Starbucks* (Br. 33), the holding of that case “permits the challenged policy” here (Br. 40). Despite its efforts, Siren cannot derive a rule from *Starbucks* that reflexively controls the outcome of this case, which necessarily turns on special circumstances.

Where an employer infringes on its employees’ right to wear union or other protected paraphernalia, the question whether the employer has proven special circumstances to justify that infringement is, by its very nature, a fact-dependent, case-specific determination. *See Bell-Atl.-Pa.*, 339 NLRB at 1086 (“cases turn[] on fine distinctions based on a balancing of respective statutory interests and on unique factual circumstances”); *Nordstrom*, 264 NLRB at 700 (Board examines “entire circumstances of a particular situation” in order to “balance the potentially conflicting interests”). Thus, the existence of special circumstances in one case, based on the specific details of that workplace, does not inexorably dictate the existence of special circumstances in subsequent cases involving different workplaces. Siren’s focus on the similarity of one prohibition to another (*i.e.*, *Starbucks*’ one-button policy and the present single-union-pin policy) therefore misses the mark because similar bans may be upheld or overturned depending on the special circumstances presented in each case. *Compare Albis Plastics*, 335

NLRB 923, 923-25 (2001) (ban on union stickers on hardhats *justified* by safety-based special circumstances), *enforced mem.*, 67 F. App'x 253 (5th Cir. 2003), *with Malta Const. Co.*, 276 NLRB 1494, 1494-95 (1985) (ban on union stickers on hardhats *not justified* by safety- or public-image-based special circumstances), *enforced*, 806 F.2d 1009 (11th Cir. 1986).

Nothing in the Court's *Starbucks* decision is to the contrary. As that decision makes plain, the boundaries of the dispute were “four Starbucks [(i.e., neighborhood)] stores” and whether Starbucks had established “special circumstances” to justify a policy limiting those stores’ employees to one union button or pin. *Starbucks*, 679 F.3d at 72, 77-78. Moreover, the distinct special-circumstances claim advanced in *Starbucks*, which the Court in turn accepted, was that multiple union buttons would “seriously erode” or otherwise “distract[] from” messages on company-issued buttons.¹¹ *Id.* at 78. Here, by contrast, the asserted special circumstance is that more than one union pin or button will interfere with the Roastery’s steampunk, hipster chic, “Willy Wonka”-type coffee experience.

(SA. 4.)

¹¹ Although Siren argues for application of *Starbucks* here, Siren’s brief acknowledges the limitations of that case—that it involved “neighborhood stores” (Br. 30), the specific question being “whether Starbucks had shown ‘special circumstances’” (Br. 32), and a claim that union buttons detracted from company buttons (Br. 32-33).

In nonetheless arguing that *Starbucks* controls this case, Siren emphasizes language in the Court’s decision suggesting that an employer “adequately” accommodates employees’ right to wear union insignia by “permitting one, but only one, union button.” (Br. 32, 36, 64 (quoting *Starbucks*, 679 F.3d at 78).) The sweeping significance Siren seeks to give to that language, however, cannot be squared with the narrow, fact-specific question necessarily decided by the Court in *Starbucks*, as just discussed. More broadly, to the extent that Siren attempts to ascribe to *Starbucks* a categorical rule that employers within this Circuit may lawfully limit employees to a single union button, pin or other insignia, that attempt—which would work a sea change in longstanding jurisprudence requiring case-by-case showings of special circumstances—should not be countenanced.

C. Siren Unlawfully Maintained a Policy Prohibiting Employees from Wearing Shirts with Designs, Logos, or Writings

Turning to the dress code’s prohibition on shirts with designs, logos, or writings, the Board found this no-logos policy presumptively unlawful because it unquestionably prevents employees from exercising their Section 7 right to wear union shirts at work. (SA. 1, 17.) Substantial evidence, moreover, supports the Board’s further finding that Siren failed to establish special circumstances justifying that prohibition. (SA. 17.)

1. Siren’s asserted public image does not justify its outright ban on union shirts

As the Board acknowledged, the no-logos policy—at least “[a]t first glance”—supports the Roastery’s “steampunk, hipster chic design aesthetic” and the dress code’s alleged goal of making employees “part of the backdrop” so they “don’t stand out.” (SA. 17 (quoting JA. 220-21).) However, as the Board found and the evidence shows, these possible justifications for the no-logos policy disappear upon examination. Indeed, “a closer look reveals that the exceptions carved into [the Roastery] dress code swallow the original rule, thereby nullifying the force of [Siren’s] special circumstances argument.” (SA. 17.)

As the Board explained by way of example, the dress code’s color palette for shirts initially was limited to a few mostly neutral colors, which helped employees “blend into the background.” (SA. 17.) At some point, however, the color palette for shirts “greatly expanded” to allow employees to choose from muted shades of “red, orange, yellow, green, blue, and purple—hardly colors that make it ‘so that [employees] don’t stand out.’” (SA. 17.)

Likewise, the dress code contains exceptions to the no-logos policy for company-branded and Partner-Network shirts. Permitted company-branded shirts include Roastery t-shirts with a graphic that occupies the entire front (a Starbucks siren) or writing “specifically designed to draw attention” (“COFFEE COFFEE COFFEE”). (SA. 17; JA. 488, 491.) The Partner Network exception, moreover,

encompasses 10 to 12 t-shirts that promote an employee’s cultural pride or identification with organizations “well beyond the four walls of the Roastery.” (SA. 17.) As the Board found, the Partner Network t-shirts, in particular, seem to “contradict the stated purpose of the Roastery dress code as they draw [a] customer’s eyes to causes that the [employee] identifies with and in effect make[] the [employee] ‘stand out.’” (SA. 17.) Although an admirable practice, the t-shirts “undercut [Siren’s] argument that its dress code is designed . . . to allow partners to blend into the background pursuant to its exacting design aesthetic.” (SA. 17.)

As the Board reasonably observed, Siren’s acceptance of Partner Network t-shirts also raises a question as to why t-shirts “promoting African-American culture and veterans status are permitted, but union T-shirts are not.” (SA. 17.) Here, the t-shirts worn by employees in September 2022 (black with green and white accents) complied with the dress code’s color palette, referenced Starbucks, and depicted a coffee shaker, with the latter graphic far smaller than the siren on a Roastery t-shirt. In addition, they contained no “derogatory or incendiary language,” and there was “no evidence” that customers complained about the union t-shirts, or that anyone (besides management) even noticed them. (SA. 17.) Thus, other than the fact that they convey a message protected by Section 7 of the Act, there is no practical difference between the union t-shirts and those that qualify as exceptions to the no-logos policy. And as the Board also noted, Siren

“already allows” employees to wear one union button or pin, which again raises a question as to why a button or pin expressing support for a union comports with the dress code, while a union t-shirt (otherwise compliant with the dress code) does not.¹² (SA. 17.)

“In sum,” Siren supposedly wants employees “adorned in muted colors with no writings to blend into the background of its Willy Wonka-esque design aesthetic.” (SA. 17.) But at the same time, it has “created a laundry list of exceptions” under which employees may wear shirts “adorned with a panoply of Starbucks-endorsed causes, images, and designs specifically conceived to draw attention to the [employee] and their attire.” (SA. 17.) *Cf. W San Diego*, 348 NLRB at 372-73 (special circumstances established where no exceptions existed to distinct all-black uniforms for public-facing employees). Meanwhile, notwithstanding the “laundry list of exceptions” to the no-logos policy, union t-shirts are categorically banned, including ones that satisfy the dress code’s color palette and complement Siren’s business as a coffee purveyor. As the Board reasonably found, the “exclusion of [u]nion T-shirts from [the] dress code’s

¹² Contrary to Siren’s contention, the Board’s apt observation does not “flip the relevant inquiry on its head.” (Br. 64.) Whether an employer strictly prohibits all non-company adornments and alterations to a prescribed dress is relevant to assessing special circumstances based on an asserted public image. *See W San Diego*, 348 NLRB at 372-73.

exceptions is neither narrowly tailored” to the asserted special circumstances at the Roastery, “nor does this exclusion outweigh the adverse impact on employees’ Section 7 rights.” (SA. 17.) Accordingly, Siren “failed to establish special circumstances” justifying its prohibition on union t-shirts, and its maintenance of the no-logos policy thus violates Section 8(a)(1) of the Act. (SA. 17.)

2. Siren’s challenges to the Board’s finding of no special circumstances are meritless

There is no merit to Siren’s arguments that the Board erred in finding a lack of special circumstances to justify the ban on union t-shirts. First, Siren claims that the Board erred because it “gave no weight to the critical fact” that employees may wear a single union pin or button. (Br. 64.) However, as the Board explained, Siren’s “tolerance for the display of some union insignia by its employees does not permit it to restrict other protected displays,” absent special circumstances justifying the specific restriction. (SA. 17 n.30.) *See, e.g., Albis Plastics*, 335 NLRB at 923-25 (requiring employer to justify rule banning union stickers on hardhats, even though employees were free to display union insignia on clothing and elsewhere), *enforced mem.*, 67 F. App’x 253 (5th Cir. 2003); *Malta Const.*, 276 NLRB at 1494-95 (same), *enforced*, 806 F.2d 1009 (11th Cir. 1986). “[T]o hold otherwise would effectively treat the display of union insignia as a privilege to be granted by an employer on the terms it chooses rather than as an essential Section 7 right that the employer is required to accommodate.” (SA. 17 n.30.)

Eastern Omni, cited by Siren, does not compel a contrary result. (Br. 64.) There, the court held that the employer established safety-based special circumstances for its limited ban on non-company decals on hard hats. *E. Omni Constructors, Inc. v. NLRB*, 170 F.3d 418, 425 (4th Cir. 1999). Having disagreed with the Board’s finding on this point, the court separately noted that the employer had otherwise “scrupulously honored” employees’ right to wear union insignia “on all of their [other] attire,” and it opined that the “prohibit[ion of] some, but not all, union insignia” was relevant in assessing special circumstances. *Id.* at 426 (citing analogous cases involving limited bans). Here, unlike in *Eastern Omni*, Siren has neither established special circumstances for the no-logos policy nor “scrupulously honored” its employees’ rights. It has instead broadly banned all union paraphernalia except for a single pin or button.

There is likewise no merit to Siren’s claims that the Board “ignored” that only company-issued shirts are exempted from the no-logos policy. (Br. 66.) As shown (pp.33-34), the Board squarely acknowledged that the permitted exceptions involve company-issued shirts (i.e., Roastery, Starbucks, or Partner Network shirts). Nor did the Board “fail to distinguish” between company-issued shirts and “employee-selected” union shirts, or ignore the role of company-issued shirts in maintaining Siren’s public image. (Br. 67.) The Board’s special-circumstances analysis explained why there is no meaningful difference between company-issued

t-shirts and union t-shirts (like those worn in September 2022) when it comes to maintaining the asserted public image for the Roastery and employees' role in that image.

Siren's remaining contentions with regard to the no-logos policy are jurisdictionally barred. Specifically, Siren argues that the Board "ignored" that the no-logos policy only applies to employees who regularly encounter customers. (Br. 65.) It also argues that the Board "overstated" its employees' interest in wearing union t-shirts because "[n]othing in the record suggests," according to Siren, that the employees who wore union t-shirts in September 2022 were "engaged in any core union organizing or bargaining activity." (Br. 66.)

Pursuant to Section 10(e) of the Act, "[n]o objection that has not been urged before the Board . . . shall be considered by the court," absent "extraordinary circumstances." 29 U.S.C. § 160(e). This requirement in Section 10(e) is jurisdictional. *NLRB v. Consol. Bus Transit, Inc.*, 577 F.3d 467, 474 n.2 (2d Cir. 2009). Here, Siren's exceptions before the Board failed to make any argument about the allegedly limited reach of its no-logos policy, or the employees' alleged lack of a genuine interest in wearing union t-shirts at work.¹³ (A. 560-64.) In its

¹³ The arguments are also not set forth within Siren's brief in support of exceptions, a non-record pleading that the Board has moved to lodge with the Court. (Br. in Supp. of Exceptions pp.15-25.)

opening brief, Siren presents no “extraordinary circumstances” to excuse its failure to timely urge these arguments before the Board, thus definitively forfeiting them, *JP Morgan Chase Bank*, 412 F.3d at 428 (arguments not made in opening brief waived), and placing them outside the range of matters the Court may properly consider.

In any event, Siren’s jurisdictionally barred arguments are unpersuasive. As a matter of law, special circumstances are not established simply because the employees at issue are customer-facing. *See* pp.19-20. And the record here belies Siren’s assertion that the employees were not engaged in “core” union activities on September 19, 2022. As shown, a group of employees coordinated the wearing of the same union t-shirt on a set date, the t-shirt referred to a union that was actively organizing Starbucks stores, representatives of that union were on hand for the employees’ concerted activity, and employee Kido tried to hand her manager a slip of paper (given to her by the union representatives) as part of asserting her right to wear the union t-shirt at work. (JA. 130-31.)

3. Siren’s *Tesla*-based challenges are meritless

Having failed to demonstrate special circumstances to justify its no-logos policy, Siren changes tack and argues that the Board “committed legal error” by relying on its *Tesla* decision to find the maintenance of the no-logos policy unlawful. (Br. 41 (citing *Tesla, Inc.*, 371 NLRB No. 131, 2022 WL 3910090

(Aug. 29, 2022), *enforcement denied*, 86 F.4th 640 (5th Cir. 2023)).) Despite the ink spilled (Br. 40-51), Siren’s *Tesla*-based arguments are without merit.

a. The Board reasonably adhered to its decision in *Tesla*

In *Tesla*, the Board “examine[d] the standard to be applied to evaluate the lawfulness of workplace rules or policies that restrict the display of union insignia by requiring employees to wear uniforms or other designated clothing, implicitly prohibiting employees from substituting union attire for the required uniform or clothing.” *Tesla*, 2022 WL 3910090, at *1. In the course of its examination, the Board comprehensively surveyed its own precedent and court precedent governing employees’ right to wear union insignia and employers’ corresponding obligation to justify restrictions of that right. *Id.* at *8-20. Ultimately, the Board “reaffirm[ed],” consistent with *Republic Aviation* and other longstanding precedent, that “when an employer interferes *in any way* with its employees’ right to display union insignia, the employer must prove special circumstances that justify its interference.” *Id.* at *1. Applying that standard, the Board found that Tesla unlawfully maintained a uniform policy that prevented employees from wearing black shirts featuring union insignia in place of black shirts bearing its logo, because Tesla failed to establish special circumstances justifying its interference with employees’ statutory rights. *Id.* at *1, 23-25.

On review, the Fifth Circuit disagreed with the Board’s finding. *Tesla, Inc. v. NLRB*, 86 F.4th 640, 644 (5th Cir. 2023). The court emphasized three factual “elements” that it believed set the case apart: the uniform policy’s “content neutrality, [its] nondiscrimination, and [employees’] freedom to attach any expressive union insignia to any piece of the uniform.” *Id.* at 649. The court concluded that the special-circumstances test “does not automatically apply when *all* components are present.” *Id.* at 651. And “[t]o the degree that *Republic Aviation* applic[ed],” the court faulted the Board’s balancing of interests, which in its view “elevated employee interests at the expense of legitimate employer interests,” such as the interest in having company uniforms. *Id.*; *see also id.* at 652.

Here, as in the underlying Board proceeding, Siren argues that the Board erred by relying on *Tesla*, because the decision was “[v]acated” by the Fifth Circuit. (Br. 40, also Br. 3, 5, 9, 10, 25, 26, 43-46.) Siren, however, misunderstands the implications of the Fifth Circuit’s adverse ruling. Under the Board’s non-acquiescence policy, to which the Board “adhere[d]” here (SA. 15 n.27), the Board “respectfully regard[s]” an adverse court ruling “as the law of that particular case,” but the underlying decision remains valid Board precedent. *D.L. Baker, Inc.*, 351 NLRB 515, 529 n.42 (2007); *see also* 29 U.S.C. § 160(e) and (f) (on enforcement or review, the court’s power extends to “enforcing, modifying . . .

or setting aside in whole or in part the [Board] order” before it). Moreover, as Siren acknowledges, “intercircuit” non-acquiescence of the kind presented here—that is, non-acquiescence in one circuit to an adverse ruling issued by a different circuit court—“ha[s] its virtues.”¹⁴ (Br. 37.)

In any event, Siren’s arguments about the status of *Tesla* fail to advance its legal challenges. As shown below, the principles it disputes predate that decision and, in applying *Tesla* here, the Board did nothing more than hew to those settled principles.

b. *Tesla* simply reaffirmed longstanding, judicially approved principles, which control here

As the Board in *Tesla* repeatedly made clear, that decision simply “reaffirm[ed]” longstanding, judicially approved principles governing employees’ right to wear or display union insignia in the workplace. *Tesla*, 2022 WL 3910090, at *1. Thus, *Tesla* reaffirmed and applied the familiar rule derived from the Supreme Court’s 1945 decision in *Republic Aviation*, that any restriction of that right is presumptively invalid, unless the employer establishes special circumstances to justify the infringement. *Id.* at *1, 8-10, 22, 23. *See Republic*

¹⁴ As shown, the Fifth Circuit’s adverse decision in *Tesla* is contrary to established Board law, decisions of other circuit courts, and Supreme Court precedent. *See* p.17-20, 42-46; *see also Tesla*, 2022 WL 3910090, at *8-20 (detailing jurisprudential landscape).

Aviation, 324 U.S. at 801-04 & nn.7 & 10 (agreeing “curtailment” of employees’ right is “clearly violative of the Act,” articulating “special circumstances” standard, and upholding Board’s use of presumption in related context of union solicitation at work); *see also Tesla*, 2022 WL 3910090, at *1, 8-9, 10 n.21, 11 & n.23, 22 (explaining basis in *Republic Aviation* for Board’s approach).

Significantly, this basic rule has been near-universally accepted by the courts of appeals, including the Fifth Circuit in an earlier decision. *See, e.g., Boch Imports, Inc. v. NLRB*, 826 F.3d 558, 570 (1st Cir. 2016); *E. Omni Constructors*, 170 F.3d at 424 (4th Cir.); *In-N-Out Burger*, 894 F.3d at 714-16 (5th Cir.); *Meijer, Inc. v. NLRB*, 130 F.3d 1209, 1214, 1216 (6th Cir. 1997); *Constellation Brands U.S. Operations, Inc. v. NLRB*, 992 F.3d 642, 646 (7th Cir. 2021); *N. Mem’l Health Care v. NLRB*, 860 F.3d 639, 650 (8th Cir. 2017); *Wash. State Nurses Ass’n v. NLRB*, 526 F.3d 577, 580 (9th Cir. 2008); *Serv-Air, Inc. v. NLRB*, 395 F.2d 557, 563 & nn.8-9 (10th Cir. 1968); *NLRB v. Malta Const. Co.*, 806 F.2d 1009, 1011 (11th Cir. 1986); *HealthBridge Mgmt., LLC v. NLRB*, 798 F.3d 1059, 1067 (D.C. Cir. 2015). And this Court, in particular, has upheld the proposition that the “curtailment of [employees’ right to wear union insignia] is clearly violative of the Act,” *Starbucks*, 679 F.3d at 77 (quoting *Republic Aviation*, 324 U.S. at 802 n.7), and that, “[t]o overcome this presumption, an employer bears the burden of showing ‘special circumstances’ that justify curtailment of the right,” *id. See also*

Midstate Tel. Corp. v. NLRB, 706 F.2d 401, 403 (2d Cir. 1983) (“the balance must tip against rules restricting employees’ right to wear union-related insignia or attire,” absent demonstrated special circumstances).

Siren cannot avoid these entrenched principles by claiming the no-logos policy is “neutral” and “non-discriminatory.” (Br. 42-45.) It is beyond dispute that the policy completely bars employees from wearing union shirts—in fact, the policy admittedly was enforced in September 2022 to prevent employees from wearing union t-shirts.

Contrary to Siren’s contention (Br. 44), the fact that the no-logos policy uniformly prohibits all other (i.e., non-union) logos, designs, and writings on shirts—ones which employees have no statutory right to display—is beside the point. This Court has stated that if a policy “curtail[s]” employees’ right to wear union shirts, it is “presumpt[ively]” unlawful and its maintenance must be justified by special circumstances to avoid violating the Act. *Starbucks*, 679 F.3d at 77 (citing cases). As ample precedent illustrates, the Board, with court approval, regularly applies the same principle to find unlawful employer rules that curtail employees’ right to wear union insignia or apparel, regardless of whether the rule is neutral and non-discriminatory (i.e., also prohibits non-protected insignia or apparel). *See, e.g., In-N-Out Burger*, 894 F.3d at 712, 714-16 (applying principle to rule that “[w]earing any type of pin or stickers is not permitted”); *Boch Imports*,

826 F.3d at 563, 570-71 (rule that public-facing employees “may not wear pins, insignias, or other message clothing”); *Long Beach Mem’l Med. Ctr., Inc.*, 366 NLRB No. 66, 2018 WL 1919188, at *1-2 (Apr. 20, 2018) (rule limiting employees to “[o]nly [company] approved pins [and] badges” and rule that “[b]adge reels may only be branded with [company] approved logos or text”), *enforced mem.*, 774 F. App’x 1 (D.C. Cir. 2019).¹⁵

Siren’s further argument that the Act’s text “confirms [its] point” falls flat. (Br. 45.) Section 8(a)(1) of the Act broadly prohibits employers from “interfer[ing] with [or] restrain[ing]” employees in the exercise of rights guaranteed by Section 7, 29 U.S.C. § 158(a)(1), and there can be no question that employees have a Section 7 right to wear union apparel at work, as discussed.¹⁶ Consequently, by categorically barring employees from wearing any union t-shirts,

¹⁵ Siren devotes several pages to a related argument that the Board “exceeded its statutory authority” (Br. 52) by “facially invalidating” its “neutral” no-logos (and no-advocacy-pins) policy. (Br. 52-57.) Siren never raised that argument before the Board (A. 560-64, Br. in Supp. of Exceptions pp.10-28), and its opening brief presents no extraordinary circumstances to excuse that failure. Accordingly, its statutory-authority argument is forfeited and barred from review here. 29 U.S.C. § 160(e); *Consol. Bus Transit*, 577 F.3d at 474 n.2. In any event, the Board, with court approval, has found so-called neutral workplace rules facially unlawful because they impinge upon the right to wear union insignia. *See, e.g., Boch Imports*, 826 F.3d at 563, 571-75; *Long Beach*, 2018 WL 1919188, at *1-2, 9.

¹⁶ Siren’s statement that Section 7 only “narrowly protects” organizing unions and bargaining collectively is contrary to Section 7’s plain, and expansive, language. (Br. 46.)

the no-logos policy interferes with and restrains employees from exercising that right.¹⁷

Siren fares no better in arguing that the Board erred by “applying [*Tesla*’s] ‘narrowly tailored’ requirement” (Br. 47), which it claims is contrary to precedent and undermines the proper balancing of employer and employee interests (Br. 47-51). Siren failed to urge such objections before the Board (A. 560-64, Br. in Supp. of Exceptions pp.10-14), and it presents no extraordinary circumstances to excuse its failure in its opening brief. Thus, its contentions are barred from review. 29 U.S.C. § 160(e); *Consol. Bus Transit*, 577 F.3d at 474 n.2. In any event, the narrow-tailoring requirement to which Siren refers is an established requirement under Board precedent that predates *Tesla* (*see* p.19), as acknowledged by several courts of appeals. *See, e.g., In-N-Out Burger*, 894 F.3d at 716; *Boch Imports*, 826 F.3d at 575; *Wal-Mart Stores, Inc. v. NLRB*, 400 F.3d 1093, 1098 (8th Cir. 2005).

4. The Board’s Order does not infringe on Siren’s free-speech rights

Notwithstanding its unjustified restriction of employees’ statutory right to wear union t-shirts, Siren insists that the Board cannot “forc[e]” it (Br. 58) to undo

¹⁷ Siren cites *NLRB v. United Steelworkers*, 357 U.S. 357 (1958), in support of its argument, but that case is inapposite. (Br. 46.) There, the Supreme Court addressed no-solicitation rules and a “very narrow and almost abstract question” about discriminatory enforcement of otherwise valid rules. *See id.* at 362.

that restriction without violating its expressive rights under the First Amendment. (Br. 57-63.) Siren's argument is both factually and legally unfounded.

As a factual matter, although Siren states (Br. 62-63) that it has "distinctive" uniforms, and that such "uniforms are designed to advertise for [it] and the unique nature of the Roastery experience," the record belies those overstatements. As discussed, outside of the mandatory apron, there is no "uniform" for Roastery baristas and operations leads. Instead, provided the selected attire follows the Roastery's broad guidelines on color, style, and type, these employees may freely choose from a wide range of clothing and accessories based on their personal preferences. And none of the employee-selected attire needs to "advertise" Siren or the Roastery through words or designs because company-branded apparel is entirely optional.

Legally, Siren's First Amendment arguments fail because they take no account of the careful balance of employer and employee rights already provided for in existing rules governing union insignia and apparel. As the Board recently explained in rejecting First Amendment-based arguments similar to Siren's, such arguments "would abrogate decades of court and Board precedent, insofar as [they] would broadly permit employers to suppress activity protected by Section 7 simply because the employer did not approve of it." *Home Depot*, 2024 WL 726240, at *18. Notably, Siren cites no on-point cases holding, let alone suggesting, that the

principles and precedent guaranteeing employees' right to wear union or other protected paraphernalia at work are inconsistent with the First Amendment.

The First Amendment's freedom-of-speech principle "prohibits the government from telling people what they must say," *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 61 (2006) [hereinafter "*FAIR*"], and from requiring people to "personally speak the government's message," *id.* at 63. The Board's Decision and Order does not run afoul of those principles because it does not involve Siren's speech; instead, the speech to which the Decision and Order is directed is Siren's *employees'* Section 7-protected speech. *See Home Depot*, 2024 WL 726240, at *18 (making same distinction). And "[w]hen an employee chooses to display particular insignia in a manner that the Act protects, it is the employee's desired message that is being conveyed, not the government's." *Id.* Siren's cited cases are, therefore, inapposite because they involve government-selected messages that individuals were required to convey. *See Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 208, 213, 217-21 (2013) (federal mandate that fund recipients have a policy explicitly opposing prostitution and sex trafficking); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795-801 (1988) (state mandate that professional fundraisers disclose to potential donors the percentage of contributions actually turned over to charity); *Wooley v. Maynard*,

430 U.S. 705, 713-17 (1977) (state requirement that passenger vehicles' license plates display state's Live-Free-Or-Die motto).

Moreover, nothing in the Board's Order compels Siren itself to speak, either on union-related matters or employee concerns involving working conditions. Instead, pursuant to the Order, Siren simply must respect its employees' exercise of their right to display Section 7-protected speech at work. Therefore, this decision does not implicate cases, cited by Siren, where the government required a party to speak or to create content. *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 579-80, 584-91 (2023) (state law requiring website designer to create custom websites for same-sex weddings); *Alliance for Open Soc'y*, 570 U.S. at 217-21 (federal law requiring fund recipients to have or adopt policy opposing prostitution and sex trafficking); *Riley*, 487 U.S. at 795-801 (state law requiring professional fundraisers to disclose amounts turned over to charities).

As its opening brief makes plain, Siren is not seeking to refrain from speaking itself, but is instead claiming a First Amendment right to stop its employees from speaking. To do so, Siren advances the proposition that individual employees' choice to wear union or other protected paraphernalia is actually its own speech.

Siren's argument depends on the sweeping legal claim that employees always serve as conduits for their employer's speech. (Br. 58-59.) Employees,

however, are not “mobile billboard[s]” for their employer. *Wooley*, 430 U.S. at 715. And although Siren seeks support for its theory in *Janus v. AFSCME, Council 31*, the language Siren quotes from that case addresses an unrelated issue—when can the government, in its role as an employer, regulate its own employees’ speech consistent with the First Amendment. 585 U.S. 878, 909-10 (2018). The cited language is also not that case’s holding because whether the activity in *Janus* constituted employee-speech-as-employer-speech was not at issue. *See id.* at 885-86, 891-95.

Siren fares no better with its argument that the Order impermissibly compels it to serve as an unwilling conduit for employees’ speech. (Br. 61-63.) As the Supreme Court has made plain, the “compelled-speech violation in each of [its] prior cases . . . resulted from the fact that the complaining speaker’s own message was affected by the speech it was forced to accommodate.” *FAIR*, 547 U.S. at 63; *see id.* at 63-65 (rejecting compelled-speech challenge to federal law, which conditioned funds on educational institutions permitting military recruiters same access as other recruiters, because law did not require schools to speak or limit what they could say).

Here, “as in *FAIR*, ‘accommodating [an employee’s] message does not affect [Siren’s] speech, because [Siren is] not speaking when” employees wear union or other protected paraphernalia. *Home Depot*, 2024 WL 726240, at *18

(quoting *FAIR*, 547 U.S. at 64). And as in *FAIR*, the Board’s finding “that [Siren] has violated the Act . . . affects what [Siren] must do—permit employees to display Section 7-protected insignia if the employees so choose—not what [Siren] may or may not say.” *Id.*

Unlike here, the “conduit” cases on which Siren relies involved rules that required the speakers to include other parties’ speech as part of their own discrete, self-contained expressive communications, thus impermissibly affecting the speaker’s own speech. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., Inc.*, 515 U.S. 557, 572-75 (1995) (every participating group affects the message conveyed by parade’s organizers, thus law requiring particular group’s inclusion altered parade’s expressive content, in violation of First Amendment); *Pac. Gas & Elec. Co v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1, 4-7, 12-14 (1986) (plurality) (state agency’s order that utility company include consumer-advocacy group’s message in monthly billing envelopes four times a year instead of utility’s newsletter burdened utility’s own expression, in violation of First Amendment).

Finally, despite Siren’s repeated insinuations and mischaracterizations (Br. 54-55, 58-60, 62), the Board’s Order here does not open the floodgates for employees to wear any manner of clothing or insignia bearing random logos and designs, political, religious, and personal messages, or competitors’ apparel. Instead, consistent with employees’ undeniable right to wear union insignia and

apparel or paraphernalia expressing concerns over working conditions, the Board's Order simply requires Siren to rescind policies restricting that right while allowing Siren, at its election, to promulgate "lawfully worded" policies. (SA. 6.) So long as Siren does not infringe on Section 7-protected messages, Siren may lawfully promulgate policies that prohibit wearing apparel outside the Act's protection. And if, in the future, Siren believes a specific item of clothing or insignia covered by the Act is nonetheless particularly problematic, then it may seek to prohibit that item based on a showing of special circumstances. In short, Siren's predicted parade of horrors is unfounded.

D. Siren Unlawfully Maintained a Policy Prohibiting Employees from Wearing Buttons or Pins that Advocate a Political, Religious, or Personal Issue

1. In the absence of proper exceptions, the Court should summarily affirm the Board's unfair-labor-practice finding

In the proceeding below, the administrative law judge found that Siren's ban on pins advocating for a political, religious, or personal issue unlawfully interfered with employees' right to engage in protected concerted activity under the Act. (SA. 18.) As the Board noted, Siren nominally excepted to the judge's unfair-labor-practice finding, but failed to "state, either in its exceptions or in its supporting brief, any grounds on which this purportedly erroneous finding should be reversed." (SA. 1 n.4; A. 560-64, Br. in Supp. of Exceptions pp.10-28.) In accordance with its Rules and Regulations, the Board therefore "disregard[ed]"

Siren’s exception. (SA. 1 n.4 (citing 29 C.F.R. § 102.46(a)(1)(ii)).)¹⁸ *See Holsum de P.R., Inc.*, 344 NLRB 694, 694 n.1 (2005) (disregarding exceptions on same basis), *enforced*, 456 F.3d 265 (1st Cir. 2006); *see also NLRB v. Rochester Reg’l Joint Bd., Local 14A*, 692 F. App’x 25, 28 (2d Cir. 2017) (discussing § 102.46(a)(1)(ii)).

Because Siren failed to “urge[]” any objection to the judge’s finding before the Board, as required to preserve an issue for judicial review, the Court lacks jurisdiction to consider any challenge to the judge’s finding here.¹⁹ 29 U.S.C. § 160(e); *see KBI Sec. Serv., Inc. v. NLRB*, 91 F.3d 291, 294 (2d Cir. 1996) (courts lack jurisdiction to review unexcepted to findings). The Court should therefore summarily enforce the portion of the Board’s Order remedying that uncontested (and uncontestable) unfair-labor-practice finding. *See Consol. Bus Transit*, 577 F.3d at 474 n.2 (Court summarily enforces uncontested violations).

¹⁸ “Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged will be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.” 29 C.F.R. § 102.46(a)(1)(ii).

¹⁹ Siren compounded its forfeiture by not even seeking to refute the disregarding of its exception in a motion for reconsideration to the Board after the decision issued. *NLRB v. Graphic Arts Int’l Union Local 13-B*, 682 F.2d 304, 311-12 (2d Cir. 1982) (challenge forfeited where party failed to raise it on cross-exceptions and did not seek reconsideration); *see also NLRB v. Ferguson Elec. Co.*, 242 F.3d 426, 435 (2d Cir. 2001) (where the Board “*sua sponte*” decides an issue, party must seek reconsideration to preserve issue for appellate review).

In any event, as the Board noted, “even if [Siren] had filed properly supported exceptions,” the Board would “adopt the judge’s finding for the reasons stated in his decision.” (SA. 1 n.4.) And with good reason. As shown below, substantial evidence supports the judge’s finding that the no-advocacy-pins policy is unlawful.

2. Even if the merits of the no-advocacy-pins policy were properly before the Court, the record would amply support the finding of a violation

Based on the record, the Board found that Siren’s dress code “explicitly” permits the wearing of company-issued or -approved buttons and pins, such as ones supporting the Black Lives Matter cause, but it otherwise prohibits wearing buttons or pins that “advocate a political, religious, or personal issue.” (SA. 18.) As the Board reasoned, that “overly broad restriction” would “forbid[]” wearing buttons or pins that, for instance, show employees’ “support [for] movements such as the ‘Fight for \$15’” wage movement. (SA. 18.) *See In-N-Out Burger*, 894 F.3d at 714 (wearing “Fight for \$15” button constituted protected activity under the Act). Employees, however, have a Section 7 right to wear insignia expressing concerns over the terms and conditions of their employment. *See* p.18. Accordingly, absent demonstrated special circumstances, the Board reasonably found that the no-advocacy-pins policy is a “restriction [that] unnecessarily

infringes on employees' Section 7 rights," in violation of Section 8(a)(1). (SA. 18.)

As to whether Siren established special circumstances, the Board found that, "[a]gain, the answer is no." (SA. 18.) Although Siren reasserted its desire for employees to "take a backseat to the [Roastery's] wonder and grandeur," that assertion "cannot be married" with its actions. (SA. 18.) Specifically, the evidence demonstrated that Siren granted "permission [to employees] to wear buttons in support of Black Lives Matter, adorn their aprons with World AIDS Day messages, and wear T-shirts, pins, and buttons that promote the dozen or so Starbucks-partner networks." (SA. 18; JA. 527, 529.) Employees, therefore, permissibly wear a variety of buttons and pins that draw attention to themselves and that advocate for causes personal to them, which undermines the public-image argument that the dress code allegedly ensures employees do not stand out. *Cf. W San Diego*, 348 NLRB at 372-73 (special circumstances where public-facing employees wore distinct all-black uniforms, and no adornments permitted except for one half-inch silver "W" pin).

Moreover, the Board also found that the policy was not narrowly tailored to the asserted special circumstances. Specifically, Siren provided "no explanation" why it permitted Black Lives Matter and Partner Network pins and buttons, "which appear to fall under the personal (and perhaps political) advocacy categories,"

while at the same time it “excludes all other personal, religious, or political advocacy” insignia not sanctioned by it. (SA. 18.) Thus, by its very nature, the policy is not narrowly tailored: it preemptively bars all non-preapproved advocacy insignia, not just those that are too numerous, overly large, offensive, or otherwise detract from the Roastery’s public image. *See, e.g., P.S.K. Supermarkets*, 349 NLRB at 35 (blanket ban on all non-company-issued buttons unlawful); *Nordstrom*, 264 NLRB at 701-02 (blanket ban on non-company-issued buttons unlawful, where banned steward button blended in with permitted jewelry).

In sum, the no-advocacy-pins policy prevents employees “engaged in protected, concerted advocacy” from wearing buttons or pins expressing “concerted complaints about working conditions,” and that restriction is neither justified by special circumstances nor narrowly tailored. (SA. 18.) Accordingly, under settled law, Siren’s maintenance of the policy violates Section 8(a)(1).²⁰

²⁰ As shown, Siren forfeited any appellate challenge to the preceding finding because it failed to urge before the Board “any grounds on which this purportedly erroneous finding should be reversed.” (SA. 1 n.4.) Although Siren’s exceptions brief contains arguments related to *Tesla* and the First Amendment, a fair reading of the brief shows that it only pressed those challenges as to the Board’s finding that the *no-logos policy* (prohibiting union shirts) was unlawful. (Br. in Supp. of Exceptions pp.10-14, 25-28.) In any event, to the extent that Siren’s opening brief contains arguments—regarding special circumstances, *Tesla*, or the First Amendment—that could apply to the no-advocacy-pins violation, they are without merit, for the reasons already discussed.

II. THE COURT SHOULD SUMMARILY ENFORCE THE PORTIONS OF THE BOARD’S ORDER REMEDYING ITS OTHERWISE UNCONTESTED FINDINGS

Based on ample, credited—and mostly undisputed (Br. 17-18)—evidence about the events of September 19, 2022, the Board found that Siren violated Section 8(a)(1) of the Act by instructing employees, pursuant to the unlawful no-logos policy, to remove their union t-shirts and threatening to discipline employees who did not comply. (SA. 1 & n.6, 18-19.) As the Board reasoned, finding these actions unlawful accords with precedent. (SA. 18-19 (citing cases).)

Siren does not directly challenge the substance of the Board’s findings. Instead, it maintains that the validity of those “derivative violations . . . depend[s] entirely” on whether its underlying dress code is lawful. (Br. 68.) The Board concurs. Because the no-logos policy is unlawful, and because Siren raises no other challenges to the unlawful instruction and threat findings, the Court should summarily affirm those violations and enforce the corresponding portions of the Order.

CONCLUSION

The Board respectfully requests that the Court enter a judgment denying the petition for review and enforcing the Board's Order in full.

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July 2025

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SIREN RETAIL CORPORATION)	
d/b/a STARBUCKS RESERVE ROASTERY)	
)	Case Nos.
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)	
v.)	Board Case No. 02-CA-305984
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent/Cross-Petitioner)	
)	
and)	
)	
WORKERS UNITED)	
)	
Intervenor)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that this brief contains 12,717 words of proportionally spaced, 14-point type, and the word processing system used was Microsoft Word for Windows 365.

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Dated at Washington, DC
this 15th day of July 2025

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the ACMS system. I certify that the foregoing document was served on all parties or their counsel of record through the ACMS system.

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Dated at Washington, DC
this 15th day of July 2025