

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**NATIONAL AUDUBON SOCIETY, INC.**

**and**

**COMMUNICATION WORKERS OF  
AMERICA**

**Cases 02-CA-291620  
02-CA-307621  
02-CA-309895  
02-CA-318953**

**ANSWER TO COMPLAINT**

Respondent National Audubon Society, Inc. (“Audubon”) answers the August 13, 2024 Complaint in the above-captioned matter (“Complaint”) as follows. Audubon denies that it violated the National Labor Relations Act (“Act”) as alleged and affirmatively states the Complaint is contrary to settled National Labor Relations Board (“Board”) law. Unless expressly and specifically admitted herein, Audubon denies each and every allegation and request for relief in the Complaint. Audubon further answers as follows:

**Unnumbered Paragraph**

***This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board’s Rules and Regulations, and alleges the Respondent has violated the Act as described below***

**Answer:** The above allegation contains legal conclusions and argument for which no answer is required. To the extent an answer is required, Audubon denies allegations in the unnamed paragraph of the Complaint.

1.

*(a) The charge in Case 02-CA-291620 was filed by the Union on March 2, 2022, and a copy was served on the Respondent by U.S. mail on March 4, 2022.*

*(b) The amended charge in Case 02-CA-291620 was filed by the Union on October 7, 2022, and a copy was served on the Respondent by U.S. mail on October 12, 2022.*

*(c) The charge in Case 02-CA-307621 was filed by the Union on November 18, 2022, and a copy was served on the Respondent by U.S. mail on November 22, 2022.*

*(d) The charge in Case 02-CA-309895 was filed by the Union on January 5, 2023, and a copy was served on the Respondent by U.S. mail on January 6, 2023.*

*(e) The charge in Case 02-CA-318593 was filed by the Union on May 26, 2023, and a copy was served on the Respondent by U.S. mail on May 30, 2023.*

Answer: Audubon admits the allegations in Paragraph 1.

2.

*(a) At all material times, the Respondent, a New York corporation, with facilities located throughout the United States, including its principal office located at 225 Varick Street, New York, New York, is dedicated to protecting birds throughout the Americas, including the United States of America, using science, advocacy, education, and on-the-ground conservation.*

*(b) Annually, in the course and conduct of its business operations, the Respondent derives gross revenues in excess of \$1,000,000.*

*(c) Annually, in conducting its operations described above in paragraph 2(a), the Respondent purchases and receives, at its New York, New York facility, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York.*

Answer: Audubon admits the allegations in Paragraph 2.

3.

*At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.*

Answer: Audubon admits the allegations in Paragraph 3.

4.

*At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.*

Answer: Audubon admits the allegations in Paragraph 4.

5.

*(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:*

- |       |        |
|-------|--------|
| (i)   | 6,7(C) |
| (ii)  | 6,7(C) |
| (iii) | 6,7(C) |

*(b) At all material times, 6,7(C) held the position of 6,7(C) 6,7(C) and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.*

Answer: Audubon admits the allegations in Paragraph 5.

6.

*(a) The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the “National Unit”):*

*Included: All full time and regular part-time employees employed by the Employer in the Development, Finance, IT, Marketing, Content, Network, Communications, Delivery, Conservation, and EDI departments.*

*Excluded: All other employees, including employees who report to the state offices (states and centers), directors, seasonal employees, fellows, interns, confidential employees, employees in the Executive Office, employees in the Office of Human Resources, employees in the Office of General Counsel, and professional employees and guards and supervisors as defined by the Act.*

*(b) On October 1, 2021, the Board certified the Union as the exclusive collective-bargaining representative of the National Unit.*

*(c) At all times since October 1, 2021, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.*

*(d) As set forth in the attached Appendix, on various dates, the Board certified the Union as the exclusive collective-bargaining representative of the bargaining units described opposite their respective dates of certification (the “State Units”).*

*(e) Each of the State Units constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.*

*(f) Based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of each of the State Units at all times since the respective date of certification set forth opposite each State Unit description in the Appendix.*

Answer: Audubon admits the allegations in Paragraph 6.

7.

*(a) On or about November 5, 2021, the Union requested, in writing, that the Respondent furnish the Union with a copy of reports provided to the Respondent created by [REDACTED] 6,7(C) [REDACTED] who had been hired by the Respondent to conduct a market survey used by the Respondent to establish a new employee salary structure to be implemented by the Respondent.*

Answer: Audubon admits that on November 5, 2021, the Union made an information request. Audubon denies all other allegations in Paragraph 7(a).

*(b) The Union repeated its request made in paragraph 7(a):*

- (i) in writing on about January 14, 2022;*
- (ii) orally on about January 19, 2022;*
- (iii) orally on about February 1, 2022;*
- (iv) in writing on about February 2, 2022;*
- (v) in writing on about February 17, 2022;*
- (vi) in writing on about May 28, 2022; and*
- (vii) in writing on about October 13, 2022.*

*(c) The information requested by the Union, as described above in paragraph 7(a), is necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective-bargaining representative of the National Unit and State Units.*

*(d) Since about January 19, 2022, orally, by [REDACTED] 6,7(C) [REDACTED] and on various subsequent dates, orally and in writing, by [REDACTED] 6,7(C) [REDACTED] failed and refused to furnish the Union with the information requested by it as described above in paragraph 7(a)*

**Answer:** Audubon admits that the union made an information request on or about November 5, 2021. Audubon denies all other allegations in Paragraph 7(b-d).

8.

*(a) Since about October 18, 2021, the Union requested that the Respondent bargain collectively about minimum salaries established by the Respondent's newly-created wage bands.*

*(b) Since about 6,7(C) 2022, the Respondent, by 6,7(C) has failed and refused to bargain collectively about the subject set forth above in paragraph 8(a).*

*(c) The subject set forth above in paragraph 8(a) relates to the wages, hours, and other terms and conditions of employment of the National Unit and State Units and is a mandatory subject for the purposes of collective bargaining.*

**Answer:** Audubon denies the allegations in Paragraph 8.

9.

*(a) On about November 18, 2022, the Union requested, in writing, that the Respondent furnish the Union with pro-forma financials (e.g., run rate, projections, forecasts) with proposed reductions and without proposed concessions including supporting explanation of all assumptions used to derive them.*

*(b) The Union repeated, in writing, its request described in paragraph 9(a) on about December 12, 2022.*

*(c) The information requested by the Union, as described above in paragraphs 9(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the National Unit and State Units.*

*(d) Since about December 24, 2022, the Respondent, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 9(a).*

*(e) The Union repeated, in writing, its request described above in paragraph 9(a), on about January 24, 2023, adding that the Respondent state any assumptions used for those forecasts, how much money it would have spent keeping the health care offerings as proposed, how much it saved, and how it arrived at those numbers.*

*(f) The information requested by the Union, as described above in paragraph*

*9(e) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the National Unit and State Units.*

*(g) Since about January 24, 2023, the Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 9(e).*

Answer: Audubon denies the allegations in Paragraph 9.

**10.**

*(a) On about November 18, 2022, the Union requested, in writing, that the Respondent furnish the Union with a summary of wage and fringe benefit costs for non-bargaining-unit employees for each of the past three fiscal years and present fiscal year-to-date, which includes a wage census (electronic format; preferably Excel) including name, job title, wage rate, scheduled weekly work hours, hire date, and all the different fringe benefits costs to the employee and the employer.*

*(b) The Union repeated its request described above in paragraph 10(a), in writing, on about December 12, 2022, and in writing on about January 24, 2023.*

*(c) The information requested by the Union, as described above in paragraph 10(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the National Unit and State Units. (d) Since about December 24, 2022, the Respondent, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 10(a).*

Answer: Audubon denies the allegations in Paragraph 10.

**11.**

*(a) On about December 12, 2022, the Union requested, in writing, that the Respondent furnish the Union with operating costs, for instance, labor taxes and fringe benefits cost could be reported separately by benefit and tax, chapter grant support could be reported by chapter, professional services could be reported by service provided and vendor, etc.*

*(b) The Union repeated its request described above in paragraph 11(a) in writing on about January 24, 2023.*

*(c) The information requested by the Union, as described above in paragraph 11(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the National Unit and State*

*Units.*

*(d) Since about December 24, 2022, the Respondent, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 11(a).*

Answer: Audubon denies the allegations in Paragraph 11.

12.

*(a) On about December 12, 2022, the Union requested, in writing, that the Respondent furnish the Union with a list of all the Respondent's non-unit employees who received a one-time cost of living payment (including their current wages), and who received a salary leveling adjustment.*

*(b) The information requested by the Union, as described above in paragraph 12(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the National Unit and State Units.*

*(c) Since about December 24, 2022, the Respondent, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 12(a).*

Answer: Audubon denies the allegations in Paragraph 12.

13.

*(a) On about December 12, 2022, the Union requested, in writing, that the Respondent furnish the union with a breakdown on the funding for the Respondent's safety program.*

*(b) The Union repeated, in writing, the request described above in paragraph 13(a) on about January 24, 2023.*

*(c) The information requested by the Union, as described above in paragraph 13(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the National Unit and State Units.*

*(d) Since about December 24, 2022, the Respondent, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 13(a).*

Answer: Audubon denies the allegations in Paragraph 13.

14.

*(a) On about January 24, 2023, the Union requested, in writing, that the Respondent furnish the Union with the exact number of grants that are restricted vs. unrestricted, the amount or balance for each grant, and the reason for the restriction.*

*(b) The information requested by the Union, as described above in paragraph 14(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the National Unit and State Units.*

*(c) Since about January 24, 2023, the Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 14(a).*

Answer: Audubon denies the allegations in Paragraph 14.

15.

*(a) On about January 24, 2023, the Union requested, in writing, that the Respondent furnish the Union with a list of the Respondent's Centers that needed support/improvements made by the Respondent and the amount of restricted funds available for those Centers, including the amount that the Respondent allocated for such support/improvement and where the funds came from.*

*(b) The information requested by the Union, as described above in paragraph 15(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the National Unit and State Units.*

*(c) Since about February 5, 2023, the Respondent, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 15(a).*

Answer: Audubon denies the allegations in Paragraph 15.

16.

*(a) About January 1, 2023, the Respondent implemented changes to employee health insurance coverage.*

Answer: Audubon denies the allegations in Paragraph 16(a).



*(b) The subject set forth above in paragraph 16(a) relates to wages, hours, and other terms and conditions of employment of the National Unit and State Units and are mandatory subjects for the purposes of collective bargaining.*

**Answer:** The above allegation contains legal conclusions and argument for which no answer is required. To the extent an answer is required, Audubon denies allegations in Paragraph 16(b).

*(c) The Respondent engaged in the conduct described above in paragraph 16(a) without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.*

*(d) The Respondent engaged in the conduct described above in paragraph 16(a) without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.*

**Answer:** The above allegations contain legal conclusions and argument for which no answer is required. To the extent an answer is required, Audubon denies the allegations in Paragraph 16(c-d).

17.

*(a) On about April 21, 2023, the Respondent provided the following benefits exclusively to employees who were not in the National Unit and State Units:*

- (i) an additional two days for holidays not already on the Respondent's calendar;*
- (ii) an increase in the number of weeks of paid leave for the birth, foster care, or adoption of a child;*
- (iii) allowing regular part-time staff working more than 20 hours per week to accrue sick leave and vacation;*
- (iv) removal of the 90-day post-hire restriction on receiving paid time off;*
- (v) paid break time to express breast milk and access to refrigeration to store pumped milk if the workplace has access to refrigeration;*
- (vi) an increase in the amount of bereavement days;*
- (vii) every other Friday off work from Memorial Day to Labor Day;*
- (viii) a new program to provide student loan assistance support to employees who have graduated within the last five years;*
- (ix) an eight-week sabbatical leave at 60% of salary after ten years of service;*

*(x) three days of paid time off to attend training and professional development classes;*  
*(xi) reimbursement for profession certifications and licenses; and*  
*(xii) a formal bonus and recognition program.*

*(b) The conduct described above in paragraphs 17(a) is inherently destructive of the rights guaranteed employees by Section 7 of the Act.*

**Answer:** Audubon denies the allegations in Paragraph 17.

**18.**

*By the conduct described above in paragraph 17, the Respondent has been discriminating in regard to the hire or tenure or terms or 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.*

**Answer:** The above allegation contains legal conclusions and argument for which no answer is required. To the extent an answer is required, Audubon denies the allegations in Paragraph 18.

**19.**

*By the conduct described above in paragraphs 7 through 16, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.*

**Answer:** The above allegation contains legal conclusions and argument for which no answer is required. To the extent an answer is required, Audubon denies the allegations in Paragraph 19.

**20.**

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

**Answer:** The above allegation contains legal conclusions and argument for which no answer is required. To the extent an answer is required, Audubon denies the allegations in Paragraph 20.

21.

*WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 18 and 19, the General Counsel seeks an Order requiring that the Respondent:*

*Electronically distribute to all employees, including former employees, employed by the Respondent since May 7, 2022, the Notice to Employees by all methods that the Respondent communicates with its employees, including but not limited to email, text message, and social media. The Notice shall be in English and any other languages deemed necessary to apprise employees of their Section 7 rights.*

*General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices.*

**Answer:** Audubon denies it has committed any unfair labor practice, denies all allegations in the “Wherefore” clauses in the Complaint, and denies any remedial Order or relief sought is appropriate or lawful.

**WHEREFORE** except as expressly and specifically admitted above, Audubon specifically denies each and every allegation or request for relief in the Complaint.

#### **AFFIRMATIVE AND OTHER DEFENSES**

1. The Complaint does not allege facts sufficient to establish a violation of the Act or state any claim upon which any relief sought may be granted.
2. The Complaint allegations are impermissibly vague and ambiguous, and therefore are a denial of Audubon’s due process rights under the Act and the U.S. Constitution.

3. The Complaint, and underlying Charges, are frivolous and were filed and made in bad faith, and for vexatious and improper purposes, including to infringe upon Audubon's statutory and constitutional rights and the operation of its business.

4. To the extent the Complaint contains allegations that are beyond the scope of the Charges, or evidence offered at trial is not encompassed within the Charge and Amended Charges, as required in Section 10(b) of the Act, such allegations and/or evidence are barred.

5. The Complaint was issued without affording Audubon adequate notice of the purported basis for the underlying Charge, Amended Charges, and/or a fair and equal opportunity to present evidence responding to the Charge and Amended Charges, thus depriving Audubon of the due process to which it is entitled under the Act and the U.S. Constitution.

6. The same actions would have been taken by Audubon even in the absence of the protected or union activities alleged in the Complaint or otherwise.

7. The Complaint is barred to the extent its legal theories, and requested remediation, are contrary to, in excess of, and outside the scope of the statutory authority of the National Labor Relations Board, and violate the separate of powers doctrine and Audubon's due process rights under the Constitution of the United States.

8. The Complaint is void as the NLRB's Division of Judges lack authority to conduct a hearing in this matter because removal restrictions on the NLRB's Members and Administrative Law Judges violate Article II of the United States Constitution.

9. The Complaint is void and the NLRB's Division of Judges lack authority to conduct a hearing in this matter because any hearing would violate Respondent's rights under the Fifth and Seventh Amendments to the United States Constitution.

10. The Complaint is void and the NLRB's Division of Judges lack authority to conduct a hearing in this matter because the remediation sought, in varying respects, exceeds the authority of the Board, is punitive, contrary to precedent and is constitutionally infirm.

11. The Complaint conflicts with, is contrary to, and is precluded by the free speech rights Audubon has under Section 8(c) of the Act and the U.S. Constitution.

12. The Complaint is barred to the extent that its allegations conflict with, are contrary to, and are precluded by Section 10(c) of the Act.

13. The Complaint is void and the NLRB's Division of Judges lack authority to conduct a hearing in this matter because the NLRB lacks subject matter jurisdiction to consider or decide the threshold constitutional matters raised by Respondent's Answer.

14. The Complaint is void and the NLRB's Division of Judges lack authority to conduct a hearing in this matter because the NLRB's unfair labor practice procedures fail to comply with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the express language of the National Labor Relations Act, and the violates the Fifth Amendment to the United States Constitution.

15. The Board is not empowered to substitute its judgment for Audubon's lawful operational and/or employment decisions.

16. If any conduct alleged in the Complaint is found to be a violation of the Act, which it is not, said conduct had a *de minimis* impact on the rights guaranteed by Section 7 of the Act and no remedy exists that would further the purposes of the Act.

17. The Act, as interpreted and/or applied in this matter, is unconstitutional.

18. The Complaint fails, in whole or in part, based on the equitable doctrines of laches, waiver, and/or unclean hands.

19. Audubon's purported conduct does not have a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act.

20. Respondent reserves the right to present additional defenses as permitted by the National Labor Relations Act and the Board's Rules and Regulations.

**WHEREFORE**, Audubon requests that an Order dismissing the Complaint in its entirety with prejudice, be entered and that Audubon have such other and further relief to which it may be entitled.

Date: August 27, 2024

Respectfully submitted,

/s/ Daniel A. Adlong  
Daniel Adlong, Esq.  
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Attorney for Respondent  
National Audubon Society, Inc.

## **CERTIFICATE OF SERVICE**

The undersigned certifies that on the 27<sup>th</sup> day of August 2024, the foregoing, **ANSWER TO COMPLAINT**, was filed via electronic filing with:

Mr. John J. Walsh, Jr., Regional Director  
NATIONAL LABOR RELATIONS BOARD  
Region 2  
26 Federal Plaza, Room 3614  
New York, NY 10278-0104

and served via e-mail upon:

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/s/ Daniel A. Adlong  
Daniel Adlong, Esq.