

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

NATIONAL AUDUBON SOCIETY, INC.

and

**COMMUNICATIONS WORKERS OF
AMERICA**

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

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT,
AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the “Board”), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 02-CA-291620, Case 02-CA-307621, Case 02-CA-309895, and Case 02-CA-318953, which are based on charges filed by Communications Workers of America (the “Union”) against the National Audubon Society, Inc. (the “Respondent”), are consolidated.

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.

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.

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.

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.

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

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)
(ii)
(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.

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.

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 a 6,7(C) 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.

(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 6,7(C) and on various subsequent dates, orally and in writing, by 6,7(C) failed and refused to furnish the Union with the information requested by it as described above in paragraph 7(a).

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.

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 paragraphs 9(e).

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).

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).

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).

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).

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).

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).

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

(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.

(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.

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.

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.

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.

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

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 REQUIREMENT

The Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be **received by**

this office on or before August 27, 2024 or postmarked on or before August 26, 2024. The

Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

Any request for an extension of time to file an answer must, pursuant to Sections 102.22 and 102.2 of the Board's Rules and Regulations, be filed electronically by the close of business on

October 6, 2023. The request should be in writing and addressed to the Regional Director of Region 2.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on **December 9, 2024, at 9:30 a.m.**, and on consecutive days thereafter until concluded, a hearing will be held before an Administrative Law Judge at 26 Federal Plaza, Courtroom A-238 (2nd Floor), New York, New York. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint.

The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: August 13, 2024

A handwritten signature in black ink, appearing to read "John D. Doyle, Jr." with a stylized flourish at the end.

John D. Doyle, Jr.
Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Ste. 41-120
New York, NY 10278

Attachments

NATIONAL AUDUBON SOCIETY, INC.

Cases 02-CA-291620, 02-CA-307621, 02-CA-309895, and 02-CA-318953

APPENDIX TO CONSOLIDATED COMPLAINT

- December 21, 2021 Included: All full time and regular part-time employees employed by the Employer out of its Mid-Atlantic regional office, including the Discovery Center in Philadelphia, PA, the John James Audubon Center in Audubon, PA, nature centers, sanctuaries, and preserves.
Excluded: All other employees, including employees who report to the National Office, directors, seasonal employees, fellows, interns, confidential employees, managers, guards and supervisors as defined by the Act
- December 21, 2021 Included: All full-time and regular part-time employees employed by the Employer in the North Carolina state office, including employees of nature centers, sanctuaries and preserves.
Excluded: All other employees, including employees who report to the National Office, directors, seasonal employees, fellows, interns, confidential employees, guards and supervisors as defined by the Act.
- December 27, 2021 Included: All full-time and regular part-time employees employed by the Employer at its Vermont state office, including employees employed at nature centers, sanctuaries, and preserves.
Excluded: Directors, seasonal employees, fellows, interns, confidential employees, employees who report to the Employer's National Office, guards, professional employees and supervisors as defined in the Act, and all other employees
- December 27, 2021 Included: All full-time and regular part-time employees employed by the Employer at its New York-Connecticut Regional Office, including employees employed at nature centers, sanctuaries, and preserves.
Excluded: Directors, seasonal employees, fellows, interns, confidential employees, employees who report to the Employer's National Office, guards, professional employees and supervisors as defined in the Act, and all other employees.
- December 28, 2021 Included: All full time and regular part-time employees employed by the Employer in the Washington state office, including employees at nature centers, sanctuaries, and preserves.
Excluded: All other employees, directors, seasonal employees, fellows, interns, confidential employees, and guards and supervisors as defined by the Act.

December 28, 2021	<p><u>Included:</u> All full time and regular part-time employees employed by the Employer in the Alaska state office, including employees at nature centers, sanctuaries, and preserves;</p> <p><u>Excluded:</u> All other employees, directors, seasonal employees, fellows, interns, confidential employees, and guards and supervisors as defined by the Act.</p>
December 30, 2021	<p><u>Included:</u> All full time and regular part-time employees employed by the Employer in the Great Lakes regional office, including employees at nature centers, sanctuaries, and preserves.</p> <p><u>Excluded:</u> All other employees, employees at the Aullwood Nature Center, employees who report to the National Office, directors, seasonal employees, fellows, interns, confidential employees, guards and supervisors as defined by the Act</p>
December 30, 2021	<p><u>Included:</u> All full time and regular part-time employees employed by the Employer in the California state office, including employees at nature centers, sanctuaries, and preserves.</p> <p><u>Excluded:</u> All other employees, including employees who report to the National Office, directors, seasonal employees, fellows, interns, confidential employees, guards, and supervisors as defined by the Act.</p>
January 4, 2022	<p><u>Included:</u> All full-time and regular part-time employees employed by the Employer in the Southwest regional office, including employees at nature centers, sanctuaries, and preserves.</p> <p><u>Excluded:</u> All other employees, including employees who report to the National Office, directors, seasonal employees, fellows, interns, confidential employees, and guards and supervisors as defined by the Act.</p>
January 6, 2022	<p><u>Included:</u> All full time and regular part-time employees employed by the Employer in the Upper Mississippi regional office, covering the states of Missouri, Iowa, and Minnesota, including employees at nature centers, sanctuaries, and preserved.</p> <p><u>Excluded:</u> All other employees, including employees who report to the National Office, directors, seasonal employees, fellows, interns, confidential employees, guards and supervisors as defined by the Act.</p>
January 6, 2022	<p><u>Included:</u> All full time and regular part-time employees employed by the Employer in the Nebraska state office, including employees at nature centers, sanctuaries, and preserves.</p> <p><u>Excluded:</u> All other employees, including employees who report to the National Office, directors, seasonal employees, fellows, interns, confidential employees, guards and supervisors as defined by the Act.</p>

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

NATIONAL AUDUBON SOCIETY

and

**COMMUNICATIONS WORKERS OF AMERICA
DISTRICT 1 LEGAL DEPARTMENT,
COMMUNICATIONS WORKERS OF AMERICA
AND COMMUNICATIONS WORKERS OF
AMERICA DISTRICT 1**

**Case 02-CA-291620;
02-CA-307621; 02-CA-309895;
02-CA-318953**

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 13, 2024, I served the above-entitled document(s) by **e-issuance**, as noted below, upon the following persons, addressed to them at the following addresses:

6,7(C)

National Audubon Society, Inc.
225 Varick Street
New York, NY 10014

Daniel A. Adlong , ESQ.
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Park Tower, Suite 1500,
695 Town Center Drive
Costa Mesa, CA 92626

Luis Benitez-Burgos , ESQ.
Communications Workers of America
District 1
80 Pine Street 37th Floor
New York, NY 10005

Nick Hanlon , ESQ.
Communications Workers of America,
AFL-CIO
80 Pine Street 37th Floor
New York, NY 10005

August 13, 2024

Date

Tira Branch, Designated Agent of NLRB

Name

Tira Branch

Signature

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 02-CA-291620

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Luis Benitez-Burgos , Esq.
Communications Workers of
America District 1
80 Pine Street 37th Floor
New York, NY 10005

Nick Hanlon , Esq.
Communications Workers of
America, AFL-CIO
80 Pine Street 37th Floor
New York, NY 10005

6,7(C)

National Audubon Society, Inc.
225 Varick Street
New York, NY 10014

Daniel A. Adlong , ESQ.
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Park Tower, Suite 1500,
695 Town Center Drive
Costa Mesa, CA 92626

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

(OVER)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.