

**REPLIES TO AMAZON.COM, INC.’S STATEMENT OF OPPOSITION TO  
ITEM 16 – SHAREHOLDER PROPOSAL REQUESTING ADDITIONAL  
REPORTING ON FREEDOM OF ASSOCIATION**

Shareholder Association for Research and Education on behalf of the Catherine Donnelly Foundation, SOC Investment Group, British Columbia Investment Management Corporation, AP3 Third Swedish National Pension Fund, CCLA Investment Management, and Actiam.

The above listed investors co-filed a shareholder proposal for the Amazon.com, Inc. 2023 annual general meeting. The proposal requests the Board of Directors “to commission an independent, third-party assessment of Amazon’s adherence to its stated commitment to workers’ freedom of association and collective bargaining rights as outlined in Amazon’s Global Human Rights Principles, which explicitly reference the Core Conventions of the International Labour Organization and the ILO Declaration on Fundamental Principles and Rights at Work.” The shareholder proposal is Item 16 in the Amazon’s *Notice of 2023 Annual Meeting of Shareholders and Proxy Statement*.<sup>1</sup>

Below are selected statements from “Recommendation of the Board of Directors on Item 16,” followed by the proponents’ replies. The replies have been reviewed by Lance Compa, Senior Lecturer Emeritus, Cornell University School of Industrial and Labor Relations.

*Amazon statement: “...approximately half of the ULP charges filed in 2021 and 2022 have already been dismissed or withdrawn for lack of merit at the earliest agency investigatory stages.”*

This fails to acknowledge the corresponding fact that half of the 250 Unfair Labor Practices (ULP) charges were not dismissed or withdrawn. Indeed, they are moving forward based on the National Labor Relations Board (NLRB) regional office determination that the charges were meritorious and should go to trial before an administrative law judge (ALJ).

ALJs conduct trials with attorneys for both sides submitting documents and examining and cross-examining witnesses under rules of evidence. ALJ decisions can be appealed to the full NLRB in Washington, and NLRB decisions can be appealed to federal circuit courts.

The third-party assessment called for in the shareholder proposal can clarify the significance of initial findings of “merit” and subsequent procedural steps in the labor law system to inform management decisions about contesting and appealing adverse rulings.

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<sup>1</sup>See Item 16 in Amazon.com, Inc., “Form DEF 14A,” filed April 13, 2023, [https://www.sec.gov/ix?doc=/Archives/edgar/data/1018724/000110465923044708/tm233694d2\\_def14a.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1018724/000110465923044708/tm233694d2_def14a.htm).

*Amazon statement: “As of March 2023, none of those approximately 250 ULP filings resulted in a final NLRB order against Amazon.”*

NLRB orders only become final when enforced by a circuit court of appeals, which usually takes 2-3 years or more. Amazon has appealed decisions by NLRB administrative law judges who, after hearing witnesses and evidence from both sides, found that the company violated the law. These cases are pending appeal.

The Amazon statement also omits reference to settlement agreements between the company and the NLRB which put an end to further litigation and avoided an ultimate final order against Amazon by a federal circuit court. For example, under a 2021 settlement agreement, Amazon agreed to a nationwide notice to all Amazon employees promising not to maintain an unlawful rule interfering with workers’ communication among themselves in support of union organizing in non-work areas on non-work time, which is “concerted activity” protected by the National Labor Relations Act (NLRA).<sup>2</sup>

An earlier case in 2016 involved 22 alleged unlawful actions at an Amazon facility in Chester, Virginia. In that settlement agreement, Amazon promised not to threaten loss of benefits, a wage freeze, loss of jobs, and other negative consequences if workers formed a union.<sup>3</sup>

In another important case that Amazon does not mention, in November 2022, a federal judge issued a nationwide injunction under Section 10(j) of the NLRA against Amazon prohibiting the discharge of employees for union activity.<sup>4</sup> The injunction ordered Amazon to “cease and desist from discharging employees because they engaged in protected concerted activity” after the federal judge found there was reasonable cause to believe that Amazon had unlawfully fired an employee at the JFK8 warehouse in 2020 because of his organizing activity. Amazon is appealing this ruling.<sup>5</sup>

The third-party assessment called for in the shareholder proposal can clarify the distinctions among 10(j) injunctions, ULP charges, ULP complaints, settlement agreements, ALJ decisions, Board rulings on appeal, and court rulings on appeal, and

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<sup>2</sup> See Settlement Agreement, *In the matter of Amazon.com Services, LLC*, Cases 13-CA-275270 et. al., December 22, 2021, <https://www.documentcloud.org/documents/21169264-amazon-nlr-agreement-december-2021>.

<sup>3</sup> See David Streitfeld, “How Amazon Crushes Unions: In a secret settlement in Virginia, Amazon swore off threatening and intimidating workers,” *The New York Times*, March 16, 2021, <https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html>.

<sup>4</sup> See NLRB, “Region-29 Wins Federal Court Order Requiring Amazon to Cease and Desist from Firing Employees for Protected Activities,” November 28, 2022, <https://www.nlr.gov/news-outreach/region-29-brooklyn/nlr-region-29-wins-federal-court-order-requiring-amazon-to-cease>.

<sup>5</sup> See Emily Brill, “Amazon Fights Order To Stop Firing Workers Over Organizing,” *Law360*, April 7, 2023, <https://www.law360.com/employment-authority/articles/1594855/amazon-fights-order-to-stop-firing-workers-over-organizing>.

what these distinctions mean for what proponents believe is Amazon’s interference with union organizing among its employees.

*Amazon statement: “Less than 0.4% of our total U.S. workforce has voted in favor of union representation.”*

This statement is devoid of relevance to the resolution, which addresses Amazon’s documented interference with workers’ organizing efforts in those locations where employees have sought to form unions. There is no way to ascertain the views of Amazon’s total U.S. workforce unless workers vote in a climate free of “pressure, fear and threats of any kind” consistent with international labor standards. A 2022 Gallup opinion poll reported that 71 percent of Americans approve of unions, the highest approval level since the 1960s.<sup>6</sup> Recent polling also shows that 52 percent of workers would vote for union representation if they could, up from 32 percent in 1999.<sup>7</sup> The views of Amazon’s large and diverse workforce is probably closer to those of the general public participating in national polls. But again, this is not relevant for the purposes of considering this resolution.

*Amazon statement: “...the oversight and findings of U.S. regulators and courts demonstrate there already is extensive and sufficient oversight of our labor relations in the United States and there is no need for a further third-party assessment on these issues.”*

This statement fails to acknowledge that the resolution involves international labor standards prohibiting interference with workers’ freedom of association. Amazon has pledged to abide by international standards, not just U.S. labor law. The ILO Committee on Freedom of Association has found many features of U.S. law to be contrary to Conventions 87 and 98.<sup>8</sup>

In fact, the main U.S. employer representative at the ILO has conceded that compliance with the Conventions “would prohibit all acts of employer and union interference in organizing, which would eliminate employers’ rights under the NLRA to oppose

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<sup>6</sup> See Justin McCarthy, “U.S. Approval of Labor Unions at Highest Point Since 1965,” Gallup, August 30, 2022, <https://news.gallup.com/poll/398303/approval-labor-unions-highest-point-1965.aspx#:~:text=Story%20Highlights&text=WASHINGTON%2C%20D.C.%20--%20Seventy-one,on%20this%20measure%20since%201965>.

<sup>7</sup> See U.S. Department of Labor, Worker Organizing Resource and Knowledge Center, “More non-union workers want unions,” <https://www.dol.gov/general/workcenter/data#welcome1>.

<sup>8</sup> See ILO Committee on Freedom of Association Case No. 1523 (denial of union access to workplace); Case No. 1543 (permanent striker replacement); Case No. 1557 (prohibition on public employees collective bargaining rights); 2227 (denial of back pay remedy to undocumented workers unlawfully dismissed for organizing); 2292 (denial of collective bargaining rights for TSA employees); Case No. 2460 (denial of collective bargaining rights for North Carolina state employees); Case No. 2524 (misclassification of workers as supervisors to deny their organizing and bargaining rights); Case No. 2547 (denial of organizing and bargaining rights for graduate student employees); Case No. 2741 (prohibition on strikes by transit workers); all cases are found at the United States case page

[https://www.ilo.org/dyn/normlex/en/f?p=1000:20060:0:FIND:NO:20060:P20060\\_COUNTRY\\_ID,P20060\\_COMPLAINT\\_STATU\\_ID:102871,1495812](https://www.ilo.org/dyn/normlex/en/f?p=1000:20060:0:FIND:NO:20060:P20060_COUNTRY_ID,P20060_COMPLAINT_STATU_ID:102871,1495812).

unions.”<sup>9</sup> That is, U.S. employers acknowledge that U.S. law allows interference that violates the ILO Conventions.

The third-party assessment called for in the shareholder proposal will provide clarification on Amazon’s compliance with the Conventions, which is the relevant issue in this proposal.

*Amazon statement: “...the proposal’s supporting statement appears to suggest that non-interference means that employers must be prohibited from communicating with their employees about union organizing efforts...”*

Amazon falls back on the phrase “appears to suggest,” because proponents of the proposal do not say this. Amazon management can communicate with employees about union organizing efforts, as long as the communications do not create a climate of “pressure, fear and threats of any kind,” as the ILO Committee on Freedom of Association has said. Proponents believe that Amazon’s documented statements attacking unions and threatening negative consequences if workers choose union representation create such pressure and fear, thus crossing the line to interference with workers’ freedom of association. A third-party assessment as called for in the shareholder proposal can analyze and make findings on this point to guide management conduct.

*Amazon statement: “Principle 3 of the United Nations Global Compact states that, ‘All, including employers, have the right to freedom of expression and opinion, including on the topic of unions.’”*

Amazon’s quotation from the UN Global Compact (UNGC) is incomplete. Amazon ends the quotation from UNGC Principle 3 with a period, when in fact it ends with a dash and goes further. The full statement says “All, including employers, have the right to freedom of expression and opinion, including on the topic of unions – provided that the exercise of this right does not infringe a worker’s right to freedom of association.” (*emphasis added*).<sup>10</sup>

Proponents believe that Amazon’s assertion, stated in mandatory captive audience meetings, that employees may suffer dire consequences if they choose union representation crosses the line to infringement of workers’ right to freedom of association in violation of international standards. A third-party assessment as called for in the shareholder proposal will help define the line between expression of opinion and interference with workers’ organizing rights and help guide future company conduct.

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<sup>9</sup> USCIB, “U.S. Ratification of ILO Core Labor Standards”, *Issue Analysis*, April 2007, [https://www.uscib.org/docs/US\\_Ratification\\_of\\_ILO\\_Core\\_Conventions.pdf](https://www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf).

<sup>10</sup> See UN Global Compact Principle 3, <https://unglobalcompact.org/what-is-gc/mission/principles/principle-3>.

*Amazon statement: "...globally, we apply or are party to dozens of collective bargaining agreements at national, regional, sectoral, and enterprise levels."*

This statement raises a question for all shareholders to consider: if Amazon can have normal, productive collective bargaining relationships with trade unions around the world, why does management spend millions of dollars on anti-union consultants (and millions more on lawyers whose payments do not have to be reported) to mount aggressive campaigns to thwart workers' organizing effort in the U.S.?<sup>11</sup>

In many countries where Amazon engages in collective bargaining with trade unions, particularly in most of Europe, the labor law systems are more aligned with ILO standards than is U.S. law. Captive audience meetings do not exist. Dismissals of employees because of union activity and statements that "things could get worse if you form a union" are non-existent or extremely rare.<sup>12</sup>

A third-party assessment of Amazon's compliance with international standards as called for in the shareholder proposal can help to inform management, the Board of Directors, and shareholders about the merits of such anti-union campaigns and associated costs.

*Amazon statement in an April 2023 phone call with proponents: "How is a third-party assessment different from what NLRB is assessing right now?"*

The NLRB assesses the lawfulness or unlawfulness of Amazon's conduct in opposing union formation among its employees under U.S. law only. But, as noted above, many elements of U.S. labor law are inconsistent with international labor standards. And again, as noted above, American employers have acknowledged that complying with ILO standards "would eliminate employers' rights under the NLRA to oppose unions."

The third-party assessment called for by the shareholder resolution would examine Amazon's adherence to its stated commitment to workers' freedom of association and collective bargaining rights as outlined in Amazon's Global Human Rights Principles, which explicitly reference the Core Conventions of the International Labour Organization and the ILO Declaration on Fundamental Principles and Rights at Work.

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<sup>11</sup> See Karl Evers-Hillstrom, "Amazon spent unmatched \$14 million on labor consultants in anti-union push," *The Hill*, April 3, 2023, <https://thehill.com/business/3931442-amazon-spent-unmatched-14-million-on-labor-consultants-in-anti-union-push/>.

<sup>12</sup> For an overall discussion of such differences, see *Comparative Labor Law & Policy Journal*, Vol. 29, Issue 2 (2008), [https://cllpj.law.illinois.edu/archive/vol\\_29/](https://cllpj.law.illinois.edu/archive/vol_29/).